Personal Injury Protection Plan **Review Committee**

Final Report / DECEMBER 2000

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December 19, 2000

Honourable John Nilson, Q.C.
Minister of Crown Investments Corporation
Room 361
Legislative Building

Dear Minister Nilson:

The Personal Injury Protection Plan Review Committee respectfully submits this report as the completion of its review of Part VIII of **The Automobile Accident Insurance Act**.

The Committee members appreciated this opportunity to be of service to the Province of Saskatchewan.

Sincerely,

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Saskatoon

Donna Larsen

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Acknowledgement

The members of the Personal Injury Protection Plan Review Committee acknowledge the assistance, advice, and support of the following individuals in helping us to complete our review of Part VIII of The Automobile Accident Insurance Act.

Annette Wright, Director of Research and Administration
Bette Olson, Office Manager
Betty Allen, Research Officer
Jean-Luc Allard, Actuary, PricewaterhouseCoopers LLP

We are grateful for the exceptional dedication they have shown to what has been a challenging task.

Executive Summary

The Personal Injury Protection Plan was established effective January 1, 1995. As provided for in Part VIII of **The Automobile Accident Insurance Act**, the Personal Injury Protection Plan Review Committee was appointed by the Lieutenant Governor in Council of the Province of Saskatchewan to review the Plan after five years of its operation. The review was conducted over the period January to November 2000, and the Committee has documented its findings and recommendations as required.

OVERVIEW

The Committee Worked with a Broad Mandate

The Committee concluded that a complete review of Part VIII of **The Automobile Accident Insurance Act** was its task. Part VIII applies to "bodily injuries caused by an automobile arising out of an accident". This sets up the Personal Injury Protection Plan, including its general scope, the no-fault benefits provided under the Plan, and the process to be followed in claiming benefits. Part VIII also contains the provisions that preclude tort actions for personal injury in most cases but allow tort actions for economic loss in excess of benefits.

The Committee's mandate therefore included addressing the following questions:

- Should Saskatchewan focus on no-fault benefits or on tort actions for injured persons?
- If no-fault benefits should be the focus, should a tort action for damages nevertheless be available to injured persons, and if so, when?
- What kinds of benefits should be available to injured persons?
- How well has the Plan been implemented and how are its processes working?
- What has been the customer service experienced by injured people in the process of obtaining benefits?

The Personal Injury Protection Plan is directed to helping people who have been injured as a result of a motor vehicle accident. The Review Committee therefore gave considerable attention to ways in which the human elements of the program might be improved to increase the Plan's effectiveness for the overall benefit of the Saskatchewan public.

The Personal Injury Protection Plan is a Modified No Fault Plan

The Personal Injury Protection Plan is characterized as a "modified no fault plan" because it combines both no-fault and tort law features. The primary focus is on no-fault benefits, but there are limited circumstances where the injured person is entitled to a tort action. The "no-fault" focus of the plan means that all persons injured in an motor vehicle accident can claim benefits whether or not they can prove that another driver was at fault and, for the most part, whether or not they themselves were at fault. The no-fault focus is "modified" by the fact that, as a secondary matter, tort actions are allowed in certain circumstances.

The Plan covers only the personal injury aspects of an automobile accident. It does not affect vehicle damage, where the person at fault pays a deductible for vehicle repair costs, and receives an insurance premium surcharge on his or her vehicle license. Under the Personal Injury Protection Plan, every Saskatchewan resident injured in an automobile accident anywhere in Canada or the United States receives personal injury benefits, regardless of fault.

The Primary Recommendation of the Review Committee

The Review Committee's primary recommendation, which provides the foundation for the other recommendations in this report, is:

That Saskatchewan maintain its Personal Injury Protection Plan with improved benefits and service, and with an enhanced role for tort law.

The report explains the primary recommendation of the Review Committee and also documents recommendations for an expanded role for tort actions within the Personal Injury Protection Plan.

The report includes recommendations for:

- Changes in many of the benefits under the plan to make them fairer and more equitable;
- Improvements in the processes involved for injured persons to access the benefits;
- Improvements in the customer service provided to injured persons by Saskatchewan Government Insurance (SGI) and health providers; and,
- Increased availability of tort actions for economic loss under Section 103, and against institutional third parties, health institutions and professionals, those who use a vehicle deliberately to harm another person, and drivers who are convicted a second time for impaired driving.

Values Underpinning the Primary Recommendation

The report refers to the moral, social and economic values that provide the foundation for the Committee's recommendations. The following values are those that the Committee believed would be important to the Saskatchewan public in considering assistance to persons injured in automobile accidents:

Rehabilitation

The Review Committee strongly supported an emphasis on *rehabilitation.* This involves the dedication of resources to assisting an injured person to return to normal activities to the greatest extent possible, and providing compensation for losses without enquiry into whether there was another person at fault. The Committee received submissions from injured people who wanted most of all to have their physical and mental health restored. The Committee also heard from a range of health care service providers who generally supported the focus on rehabilitation.

Community Responsibility

The Review Committee gave significant emphasis to the value of *community responsibility.* This value implies collective concern for the fate of persons injured in automobile accidents. Although most accidents can be prevented, a no-fault plan takes the position that accidents are a part of the community fabric and therefore part of the community's responsibility.

Practicality

The Review Committee also emphasized the value of *practicality.* The provision of no-fault benefits is immediate and can be delivered through a relatively simple process. A no-fault scheme committed to helping injured people appears to be a far more pragmatic and effective mode of addressing the situation when compared to the inherent delays in receiving assistance under a tort system.

Individual Responsibility

The Committee recognized that, if a satisfactory emphasis was placed on the preceding values, in some situations it was important to give emphasis to *individual responsibility.* This justified retaining tort liability in a number of situations, and was also important in placing the onus on injured persons to strive for recovery.

Deterrence

The Committee also noted the importance of retaining *deterrence* as a value in some situations. It was recognized that tort law sometimes acts as a deterrent of negligent behaviour because the threat of a lawsuit may make people or institutions more careful. In these circumstances, tort may actually *prevent* harm in the first place.

Loss Spreading

The Committee also considered that tort law may function to spread the financial impact of an injured person's loss among a wider section of the community than does a no-fault scheme. The cost of the Personal Injury Protection Plan is borne by the vehicle-owning public, whereas tort actions may impose liability on others involved in motor vehicle transport, such as third party businesses and public authorities.

Harmony

The Committee considered the value of *harmony* as particularly important. A modified no-fault system provides a balance of various approaches and perspectives in a holistic way. It can better integrate values in a manner that seems fair and just overall. Such a scheme can assist injure persons effectively without polarizing people in adversarial roles, and can additionally impose personal responsibility at a number of points. It can best recognize the social and economic complexities of the whole accident situation.

Affordability

The question of *affordability* was also a significant factor for the Committee. Even where a tort action might be thought justified as a moral response to an automobile accident, the Committee recognized that the cost of proving fault may be prohibitive.

The Committee considered that a scheme focused on no-fault by comparison with one focused on tort was better value for money, because available money was more directly used to help injured people. The *relative* level of benefits and costs under the two types of schemes is striking. The amount of support for rehabilitation is much higher under a no-fault scheme. As well, many people cannot handle the cost or rigour of tort litigation, and most people are unable to pay the money necessary to satisfy a tort judgement against them.

Overall, the ideas of wellness, health-related quality of life, response to community needs and community justice (rather than individual one-to-one justice) are better exemplified in a modified no-fault system than any other type of scheme. The Personal Injury Protection Plan has allowed Saskatchewan residents to pay almost the lowest premiums in Canada for the injury component of their plate insurance, while offering benefits as generous as anywhere else in Canada.

From a Saskatchewan consumer's point of view, the measure is: *"How much protection from the consequences of an automobile accident is the Saskatchewan person getting for his or her dollar?"* The Committee was of the view that the Personal Injury Protection Plan, as amended by the recommendations presented in this report, was the best protection available given the available resources.

The Review Considered a Range of Perspectives

Injured Persons who have had Experience with the Personal Injury Protection Plan

As a matter of priority, the Review Committee set out to listen to injured people describe their experiences with the Personal Injury Protection Plan. The public efforts on this front involved consultation meetings in 13 locations across the province in June, 2000: Saskatoon, Regina, Moose Jaw, Prince Albert, Estevan, Weyburn, Swift Current, Kindersley, Creighton, Buffalo Narrows, La Ronge, Melfort, and Yorkton. The Committee heard extremely helpful presentations by injured people at these meetings.

The consultation process was not limited to the public meetings. To ensure a comprehensive approach, the Committee decided to contact directly each person that had experience with the Plan since it was put in place in 1995. To accomplish this, the Committee sent a letter to each of more than 35,000 individuals. The letter informed them of the review process and asked them for their views. Specifically, two questions were asked:

- What was your experience with the Personal Injury Protection Plan?
- Do you have any suggestions for the future of the plan?

The response to the letter was quick and significant. The Committee received more than one thousand phone calls, letters and e-mails from people sharing their experiences and their suggestions for the Plan's future.

Through the meetings and the responses to the letter, the Committee was able to discover what many people felt were the strengths and deficiencies in the Plan, and the Committee was able to identify specific issues that needed to be addressed. The Committee members are extremely grateful to each and every person who contributed to this process. The insights of people who have been directly affected by an injury and have claimed benefits under the Plan were an important part of the Review Committee's discussions.

Health Care Providers and Advocacy Groups

The Committee sought the perspectives of health care providers that assist injured persons with rehabilitation and recovery. A number of organizations and health care professionals submitted thoughtful and helpful comments that were carefully considered in the Committee's deliberations.

Advocacy groups were also helpful to the review, with a number of these groups submitting their own assessment of the Plan and its impact. The groups presented views from a number of perspectives, including injured persons, health care providers, professional associations, and municipal government.

Saskatchewan Government Insurance

Saskatchewan Government Insurance indicated that the Auto Fund implemented the Personal Injury Protection Plan to meet three major goals: to improve injury benefits; to enhance fairness; and to stabilize injury claim costs. It is apparent that these goals have been met over the five years of experience with the Plan.

Since the implementation of the Personal Injury Protection Plan, SGI has tracked consumer feedback and concerns and consulted with care providers about how the Plan might better serve the needs of those injured in motor vehicle accidents in Saskatchewan. This external perspective was helpful to SGI as it practised ongoing self-examination to identify opportunities for improvement. As a result, SGI has made and continues to make ongoing changes to the administration of the Plan.

In preparing for the legislated review process, SGI considered feedback from individuals and groups over the years. The corporation then conducted an internal review with its staff to identify matters for consideration in the review process. The corporation's subsequent submission to the Review Committee included recommendations for 44 potential improvements to the Personal Injury Protection Plan.

The Review Committee appreciates SGI's willingness to respond on a timely and comprehensive basis to any request from the Committee for further information throughout the review process. The corporation's co-operation was important to the Committee's ability to complete the review.

Expert Advice

The Review Committee identified case management as an important consideration for review. In light of this, the Review Committee contracted William M. Mercer Limited (Mercer) to evaluate SGI's rehabilitation case management and adjudication processes. Mercer consultants reviewed 101 injury files to assess case management performance under the Personal Injury Protection Plan.

The Review Committee also required the expertise of a consulting actuary to analyze the financial impact of any recommendations and provide expert advice throughout the Committee's deliberations. The Review Committee selected PricewaterhouseCoopers LLP (PWC) to assist with this important work.

The Committee also engaged Brown Communication Group in Regina to provide advice and assistance with respect to a range of communications activities as required throughout the review process.

A Logical Division of Issues and Considerations

The Committee organized its work within four broad categories of issues and considerations:

- *Tort Law and No-Fault:* The Committee considered whether the primary response to persons injured in automobile accidents should be through no-fault benefits or through tort law, or through a combination of the two. This included the role that tort law should play if the Personal Injury Protection Plan is maintained.
- *Benefits:* The Committee considered the character and level of no-fault benefits that should be provided under the Personal Injury Protection Plan.
- *Process:* The Committee considered the processes through which injured persons obtain benefits, including appeals procedures and access to the courts.
- *Service:* The Committee considered the nature and quality of customer service that should be provided to injured persons by SGI in administering the Plan.

The various topics addressed by the Committee are interrelated. The Committee was aware that its recommendation under one topic might directly affect a recommendation under another. The Committee therefore went through a process of revision and rethinking of its separate recommendations in light of its consideration of topics in different areas. As a result, the report should for the most part be read as an integrated whole in which many recommendations are interdependent.

TORT LAW AND NO-FAULT

The Review Committee considered a range of alternatives to the basic structure of the Personal Injury Protection Plan. The five alternatives were:

- ***Pure Tort Law.*** Tort law gives the injured person a right to sue a person who was at fault. If the individual was also at fault, there is still a claim, but the award of damages will be reduced according to the relative degree of fault of the parties.

- ***Pure No-Fault.*** A pure no-fault scheme gives benefits to injured persons whether or not they can prove that another driver was at fault and, for the most part, whether or not they themselves were at fault. It completely replaces tort law as a vehicle for helping those injured in automobile accidents.

- ***Modified Tort or "Add-On" Plans.*** This type of tort scheme was in place in Saskatchewan prior to 1995. The primary focus is on tort actions. However, as a supplement, limited no-fault benefits are available. The claims procedures are usually very simple, but the benefits are sufficient only to deal with minor injuries.

- ***Modified No-Fault.*** A modified no-fault scheme is another tort/no-fault hybrid, but one where the primary focus is on no-fault. Substantial no-fault benefits are provided which cover most of the ground of tort law. However, there is a limited right to sue in tort to supplement the no-fault benefits where another person was at fault. The Personal Injury Protection Plan is a modified no-fault scheme.

- ***Universal Schemes.*** A universal scheme is an extended pure no-fault scheme. It provides benefits to all persons who suffer injury, whether such an injury is suffered in an automobile accident, at work, by medical error, at home, or by any other traumatic incident. Tort actions for personal injuries are completely replaced by the scheme.

The Review Committee considered these alternatives, and discussed variations on the five models. The Committee strongly supports a "modified no-fault" plan as the basic structure of the existing Personal Injury Protection Plan.

This fundamental conclusion is consistent with the values on which the Committee placed emphasis, and is also consistent with the stated goals of the Auto Fund, which include universality, compensation without fault, and health-related quality of life. The Review Committee's recommendation also arises as a result of listening to numerous injured people who considered recovery from their injuries to be a first priority.

Within the context of a "modified no-fault" foundation, the Review Committee considered an increased availability of a tort action as a supplement to the no-fault benefits in five areas:

- ***Increased tort action for economic loss under Section 103.*** The Committee agreed with SGI that the income "gap" in Section 103 of the Act should be closed, so that a tort claim for loss of earnings was available for all income loss in excess of no-fault benefits. As well, the Committee was of the view that the tort action in Section 103 should be available in Small Claims Court as well as in Court of Queen's Bench.

- ***Availability of tort actions against institutional "third parties".*** For a number of reasons, the Committee was of the view that the immunity from an ordinary tort action should not stretch beyond individuals who are involved in the immediate circumstances of the accident. Institutional third parties, such as businesses or public authorities, should be liable for the consequences of their negligence.

- ***Availability of a tort action against health care institutions and professionals who negligently make injuries worse.*** The Committee was of the view that a tort action for all losses should be available against health professionals or institutions that negligently exacerbate injuries originally caused in an automobile accident. This would make their liability the same as it is with respect to treatment of injury caused by any other means.
- ***Availability of a tort action against those who use a vehicle deliberately to harm another person.*** The Committee was of the view that intentional infliction of harm should be approached differently from negligent driving. The normal remedies for intentional infliction of injury should be available to an injured person, including the right to claim "aggravated" and "exemplary" damages in a tort action for the manner in which the harm was inflicted. The perpetrator should also lose no-fault benefits for income replacement and permanent impairment.
- ***Availability of a tort action against drivers who are impaired, if they have a previous conviction.*** The Committee was of the view that, after one conviction for impaired driving, a person should be put on notice that he or she can be subject to liability in tort if there is subsequent infliction of injury while impaired. Such a driver should also lose no-fault benefits for income replacement and permanent impairment.

BENEFITS

The Committee looked at a large range of issues related to benefits provided under the Personal Injury Protection Plan, and recommended changes in a number of areas. Some of the more significant changes recommended are identified below.

Benefits for Rehabilitation

The Committee recommends:

- That the medical and rehabilitation limit be increased from $541,824 to $5,000,000, with caps on the amount available for weekly personal and home care.
- That the care grids for personal and home care assistance be revised and benefits include activities normal to operating that injured person's home.

Benefits for Intangible Loss

The Committee recommends:

- That the amount of the Permanent Impairment Benefit for catastrophic injuries be increased to $175,000.
- That for assessing permanent functional impairment, SGI adopt the Manitoba schedule, which includes soft tissue injuries and impairment of neck and back function.
- That SGI evaluate the feasibility and affordability of Quebec's Intangible Loss Benefit.

Benefits for Income Replacement

The Committee recommends:

- That the maximum yearly insurable earnings remain at $56,855, and continue to be indexed to the Industrial Average Wage.
- That the income replacement benefit be based presumptively on employment at the time of the accident, but that where the injured person can show that he or she would likely have earned a larger sum in the year prior to the accident, that the income replacement benefit be based on that sum.
- That in all cases unless otherwise specified, there be an option available upon request of the claimant for a reassessment of the income replacement benefit after 180 days following the accident, and that from that time onward the income replacement benefit be based on the greater amount of minimum wage or the average annual income in the two years prior to the accident.
- That in the case of a person who was a caregiver of one or more persons at the time of the accident, the income be based on an assessment of the probability that the injured person would have earned income in the future and when that income would have been earned; and that the assessment be based on the education, training, work experience and physical and intellectual abilities of the injured person prior to the accident.

The Committee also made recommendations which would lead to a fairer assessment of the income replacement benefit for farmers and self-employed persons, including a contractor option for the replacement worker benefit, and an option to vary the benefit according to changed circumstances.

Benefits for Caregivers

The Committee recommends:

- That for the for the first 180 days, the schedule of payments for caregiving be retained, and that an injured person who remains fully incapacitated from caregiving during that period be entitled to the amount in the schedule without proving actual expenses.
- That after 180 days, caregiver benefits be paid according to the greater of (a) actual and reasonable expenses, within limits or (b) the minimum wage.
- That the legislation make clear that injured persons who at the time of the accident worked outside the home and were also responsible for caregiving tasks should have access to both caregiver benefits and income replacement benefits. That the benefits for caregiving be calculated based respectively on the number of persons cared for and the tasks the injured person performed before the accident.

PROCESS

The Committee looked at the Personal Injury Protection Plan's processes from the perspective of two primary themes: (1) a streamlined continuum of discrete processes, and (2) the underlying integrity of the service delivery system. These themes capture the two key messages for effective process: individual processes that connect as seamlessly as possible, and a support system for those processes that applies resources appropriately.

Five central processes

Although the Personal Injury Protection Plan encompasses a multitude of specific processes, the Committee looked at five central processes: application for benefits, adjudication, case management, rehabilitation and medical management, and appeals and advocacy. The most significant recommendations are identified below.

Case Management

The Committee recommends:

- That SGI enhance its case management practices, building on the findings from the Mercer review. The Committee also recommends that the roles and responsibilities of the case management team be clarified and communicated based on the following elements:
  (1) the Personal Injury Representative as the primary case management coordinator for the injured person, including being proactive in coordinating and cooperating with the primary caregivers;
  (2) the primary caregiver as the health care case manager, coordinating and cooperating with other health care providers and communicating with the injured person and SGI; and
  (3) the vocational rehabilitation consultant as the return to work or activities of daily living case manager, coordinating with the injured person, SGI, the employer, and others as required to assist the injured person.

Rehabilitation and Medical Management

The Committee recommends:

- That the injured person's choice of a primary caregiver be formally acknowledged. That the individual practitioner be informed of the designation so that he or she may understand and fulfill the primary caregiver role in assisting the injured person, including the provision of timely and adequate reports.
- That SGI continue to use the Early Intervention Program approach to helping injured persons with their rehabilitation. That the purpose and process and value of the Program be more effectively communicated to injured persons, to the primary caregiver, and to other health care providers.
- That SGI shift the timing of secondary and tertiary assessment and treatment to be more systematic, with referrals triggered by defined timelines.
- That SGI emphasize in its communications with injured persons the responsibilities that they as claimants must fulfill on a timely basis related to their injury claims. That the communications emphasize the importance of fulfilling these responsibilities as positive and constructive in helping the individual to control and contribute directly to their successful recovery and rehabilitation.

- That SGI take a leadership role in establishing more optimal chronic pain management services across the province, similar to what it did in establishing the Acquired Brain Injury Program. That in this initiative, SGI work in collaboration and on a cost shared basis with Saskatchewan Health, the Workers' Compensation Board and other agencies.

Appeals and Advocacy

The Committee recommends:

- That an independent personal injury advisory office be established, reporting to Minister of the Crown other than the SGI Minister, to assist injured persons when they are in disagreement with SGI, including assistance in all appeals processes.
- That alternative dispute resolution processes be retained and expanded to replace the legislated internal review process; and that the injured person have a choice concerning such dispute resolution processes prior to appeal to an independent tribunal.
- That an independent personal injury tribunal be established to deal with personal injury appeals, and that the tribunal include a legal and physical office separate from SGI, and report to a different Minister of the Crown.
- That appeals from the personal injury tribunal to the Saskatchewan Court of Appeal be allowed, but only on a question of law or jurisdiction.
- That the timelines for the appeals process be based on (a) the claimant making the appeal within one year of the decision in question and (b) each stage of the appeal (i.e., the alternative dispute resolution and the independent tribunal) allowing a maximum of 90 days from receipt of the appeal to a decision being required.

The current appeal mechanism for decisions made under the Personal Injury Protection Plan involves an internal review, mediation, and appeal to the Court of Queen's Bench. There is also a potential appeal to the Saskatchewan Court of Appeal on points of law or jurisdiction. The mediation stage is optional.

The Committee recognized a number of concerns about the current system:

- The internal review does not have the appearance of impartiality;
- The mediation stage is not successfully leading to settlement in many cases; and,
- The appeal to Court of Queen's Bench is too formal and too expensive, and is often too late to be of value.

At the initial claims stage, the Committee concluded that there should be no injection of an independent advisor, since this would duplicate the role of the Personal Injury Representative. Continued training should ensure that advice and advocacy are fundamental characteristics of the Personal Injury Representative position.

At the dispute resolution stage, the Committee concluded that there should be a range of alternative dispute resolution (ADR) mechanisms available, including neutral evaluation, binding arbitration, and mediation. The injured person should also have available the services of an advisor or advocate from a newly-created and independent personal injury advisory office, staffed by persons with a range of expertise, including counselling and negotiation skills. The office should be responsible to a different Minister than is SGI.

At the appeals stage, the Committee concluded that a new and independent personal injury tribunal should take over the current role of the Court of Queen's Bench in handling appeals. The tribunal should also be responsible to a different Minister than is SGI, and should draw on a variety of expertise. It should be less formal than the court system and be readily accessible. Where necessary, the injured person should be represented by a lawyer.

The basic model for the recommended advocacy and appeal structure is from Manitoba, where an Automobile Injury Appeal Commission took over the role played by the Court of Queen's Bench for appeals. Appeals in Quebec are also to an administrative tribunal. The experience with intermediate and alternative dispute resolution mechanisms in Ontario and British Columbia should also be looked at.

Underlying Processes

The service delivery system for the Personal Injury Protection Plan needs to have a foundation that supports it. The Committee considered aspects of five underlying processes:

- Human resources management, including Personal Injury Representative recruitment and training and management/support;
- Organizational model for service delivery, including the Personal Injury Representative as the focal point;
- Communications and information flow, including public education and awareness around program content and reasonable expectations;
- Linkages between health care professionals; and,
- Quality assurance, including the performance of Personal Injury Representatives, contractors, and service providers.

The most significant recommendations related to these processes are identified below.

Human Resource Management

The Committee recommends:

- That SGI continue to enhance its human resource management approach in the Personal Injury Protection Plan, including:
  (1) Recruitment with a focus on attitudinal strengths and competencies in line with the characteristics of a good Personal Injury Representative;

  (2) Training with an enhanced focus on service considerations, including demonstrating understanding, sensitivity, and compassion for injured persons;

  (3) Addressing workload assignment and distribution issues for Personal Injury Representatives, specifically in rural and northern areas where significant travel is involved and the Personal Injury Representative plays a key communications role for the Personal Injury Protection Plan; and,

  (4) Providing effective supervisory support to the Personal Injury Representatives.

Communications and Information Flow

The Committee recommends:

- That SGI undertake to review its communications approaches and messages and endeavour to increase and improve:
  (1) The public's understanding and expectations of the Personal Injury Protection Plan;
  (2) The flow of information to injured persons and management of their expectations throughout the course of their claim experience; and,
  (3) The education of health care providers, including the reinforcement of the research and evidence on which the Early Intervention Program is based.

The Review Committee heard a range of experiences related to communications and information flow – some excellent, with high levels of satisfaction, and some very poor, with high levels of dissatisfaction.

Through the course of the review, the Review Committee became aware of a high degree of misunderstanding, misinformation, and wrong assumptions about the Personal Injury Protection Plan among the general public. Despite the availability of information when purchasing insurance coverage annually, members of the public appear to choose to be largely uninformed about the Plan and its application.

This essentially passive approach is difficult to address, particularly given the criticism levelled at SGI when it undertakes broad communications efforts to improve understanding. The passive approach also leads to difficulties in claim situations when expectations of injured persons are not realistic. For example, injured persons may have unrealistic expectations that their injuries will be "fixed" and will become frustrated and angry when these expectations cannot be met.

The Review Committee heard from some individuals that SGI's communications efforts during the introduction of the Personal Injury Protection Plan were inadequate and therefore partly responsible for the degree of confusion about what this new system meant. The Review Committee also heard that it was important to communicate continuously in order to build and sustain knowledge and understanding, including for new drivers in the province.

SERVICE

The Review Committee considered the service aspects of the Personal Injury Protection Plan in order to gain further understanding of the impact of the Plan and its effectiveness in serving injured people. Effective service can be defined according to the particular program, but necessarily encompasses some fundamental components, such as timeliness, courtesy, and ease of use.

SGI measures customer satisfaction through a Claims Customer Service Survey, and the Review Committee looked at a sampling of completed surveys as well as the overall results. The satisfaction ratings were generally very positive.

The surveys are sent to claimants selected randomly by SGI's computer system from injury claim files closed in the three months prior to the surveys being generated. *No surveys are sent to open injury claim files,* which the Committee identified as an issue. Many of the injured persons who contacted the Committee about their experiences are still considered to have open files and have not therefore been asked to complete a survey. The Committee suggests that for these longer-term claims, the satisfaction of customers should be measured on an ongoing basis. SGI could modify its survey to deal with satisfaction on a "progress" basis in these instances.

In considering the service issue, the Committee also took into account Mercer's findings on customer service. In the course of Mercer's review of 101 claim files, the firm found and commented on evidence of customer service performance:

> *"The customer service provided by SGI is excellent ... In general, we considered the extent and tone of communication, as well as the accessibility and service orientation of the Personal Injury Representatives, to be considerably superior to that commonly found in the group disability insurance industry."*

While it is important to note that Mercer did not interview any injured persons or Personal Injury Representatives when conducting its review, the claims files clearly documented substantive detail on activities related to communications and responsiveness.

Focus on the Individual

A fundamental service theme for the Personal Injury Protection Plan must be a focus on the individual. Within this broader theme, the Committee considered five key features:

- Customization – each case on its own merits;
- Listening – a primary communications activity with each individual;
- Sensitivity – an attitude of compassion and respect for the individual;
- Privacy – confidentiality and trust with information about the individual; and,
- Advice – guiding the individual through the process according to his or her unique needs for information and assistance.

The Committee found that SGI's performance is generally very good in providing services with these characteristics. The key recommendation in these areas is identified below.

Customization

The Committee recommends:

- That SGI reinforce in its Personal Injury Representative training that the Personal Injury Representative is responsible for helping the individual claimant to understand that the corporation recognizes and respects that each injured person's situation is unique, but that:
  (1) Aspects of each injury have some similarities;
  (2) Based on those similarities, SGI and the health care system use some standardized (and proven) approaches; and,
  (3) To the degree it is appropriate, these approaches will be applied to the individual's circumstances.

Making it Easy

A second fundamental service theme for the Plan must be a focus on good service that is "user-friendly" and makes things easy for the individual. In a situation where a person has been injured, this takes on special dimensions, much like it does, or should, within the health care system. Within this broader theme of "making it easy", the Committee considered five key service features:

- Accessibility – ensuring ease of access to information and services;
- Flexibility – accommodating situations out of the normal framework;
- Consistency – effective policy dissemination and file review to ensure general consistency in benefits;
- Responsiveness – routinely asking injured persons for feedback on the service they have received and using this information to manage performance issues; and,
- Proactivity – ensuring the right information is provided in the right form for the individual on a timely basis, including access to the program guide and to files.

The Committee found that SGI is generally doing well in providing services with these characteristics. The significant recommendations in this area are identified below.

Accessibility

The Committee recommends:

- That SGI explore ways of enhancing geographic accessibility to the Personal Injury Protection Plan services, particularly for secondary and tertiary assessment and treatment. Discussions to explore coordinated services should extend to other agencies serving the north, including northern health districts, the Workers' Compensation Board, and the federal government's Medical Services Branch.
- That SGI initiate and maintain an ongoing information and awareness program to increase the general knowledge and awareness of the Personal Injury Protection Plan and associated benefits. The corporation should consider the use of a Personal Injury Representative or an on-site "northern liaison" person to assist with this process.

COST

The financial implications of the Committee's recommendations are estimated to be a $5.5 million increase in annual costs. Translated into the cost impact on a Saskatchewan person purchasing personal injury insurance from SGI, this would mean an average increase of approximately $6.00 on the plate insurance.

CONCLUSION

The Committee has reached five fundamental conclusions about the Personal Injury Protection Plan:

- ***The Personal Injury Protection Plan is based on a solid foundation.*** The basic principles, benefits, and administration of the Plan are sound and should be continued.
- ***The transition was difficult, but the Plan has improved over time.*** The Plan got off to a fairly difficult start, particularly in the first two years. The early difficulties have been gradually overcome as SGI gained more experience with the Plan, as key resources (e.g., the Personal Injury Representatives) became more comfortable with their new client-focused role, and as supporting materials such as the benefits guide and operating manuals were developed.
- ***The room for improvement is significant.*** Despite the solid foundation of the Personal Injury Protection Plan and the improvements over time, many other improvements are possible and necessary.
- ***The use of tort law should be expanded.*** The issues surrounding the role of tort law in the Personal Injury Protection Plan are both complex and controversial, with the fundamental question being the whether the Plan should remain "modified no-fault" or be changed back to become a "modified tort" or "add-on" plan. The Committee concluded that the Plan should remain focused on no fault, but also concluded that the use of tort law should be expanded.
- ***Public understanding and public awareness must be priorities.*** Public awareness and public understanding of the Personal Injury Protection Plan were substantially deficient, particularly when considering the number of people affected by the Plan and the essential nature of this public insurance program. Considerable effort is required to improve public awareness and understanding of the Personal Injury Protection Plan and what it means for Saskatchewan people.

The Review Committee recommendations are the result of a comprehensive process. We gave careful consideration to a broad range of issues and alternatives within the context of underlying values and the perspectives of the many people with an interest in the Personal Injury Protection Plan. The Committee trusts that the advice provided in this report will be helpful to decision-makers as they address the future of Part VIII of **The Automobile Accident Insurance Act** and its impact on Saskatchewan people.

Chapter One — Introduction

The Personal Injury Protection Plan Review Committee was appointed by the Lieutenant Governor in Council of the Province of Saskatchewan to review Part VIII of **The Automobile Accident Insurance Act** (included in Appendix A). The review was conducted over the period January to November 2000, and the Committee has documented its findings and recommendations as required.

The Personal Injury Protection Plan is a scheme that assists injured persons in their process of recovery from the consequences of motor vehicle accidents. The Plan, which has been in place in Saskatchewan since January 1, 1995, is a "modified no-fault plan". This means that:

(a) The primary focus of the plan is on benefits for all persons injured in motor vehicle accidents. These benefits are paid regardless of whether injured persons can prove that another person was at-fault, and for the most part, regardless of whether injured persons were themselves at-fault. These are called "no-fault" benefits.

(b) In addition to the no-fault benefits, the plan sometimes gives injured persons the right to sue in tort for compensation from a person who was at-fault in the accident. This right to sue is a "tort action" for damages. It "modifies" the no-fault nature of the plan by making some rights dependant on proof of fault by another person.

In this introductory chapter, the report makes reference to the primary recommendation of the Committee, the Committee's mandate, the values underlying the recommendations, the alternative types of schemes considered by the Committee, the historical context of the review, and various aspects of the review process.

The Primary Recommendation

The Review Committee's primary recommendation, which provides the foundation for the other recommendations in this report, is:

That Saskatchewan maintain its Personal Injury Protection Plan with improved benefits and service, and with an enhanced role for tort law.

This report explains the primary recommendation and goes on to detail specific recommendations that the Committee considers will significantly improve the Personal Injury Protection Plan. The recommendations reinforce the role of no-fault benefits as the principal mode of assisting persons injured in automobile accidents.

The report includes recommendations for:

- Changes in many of the benefits under the plan to make them fairer and more equitable;
- Improvements in the processes involved for injured persons to access the benefits; and,
- Improvements in the customer service provided to injured persons by Saskatchewan Government Insurance (SGI) and health providers.

The report also includes recommendations that will increase the availability of tort actions as a secondary component of the overall Plan. The report includes recommendations for:

- Increased availability of the action for economic losses in excess of benefits as provided in Section 103 of **The Automobile Accident Insurance Act**;
- A tort action against institutional third parties, i.e. parties other than the driver or owner of the vehicle;
- A tort action against health professionals and institutions when their conduct negligently makes an injured person's injuries worse;
- A tort action against a person who has used a vehicle deliberately to harm another person; and,
- A tort action against a driver who is convicted of impaired driving in relation to an accident and who has a previous conviction for impaired driving within the preceding five years.

The report refers to the moral, social and economic values that provide the foundation for the Committee's recommendations. These include: rehabilitation, individual responsibility, deterrence, loss spreading, community responsibility, equity and equality, and harmony. The report recognizes practicality as another value to be considered, and also the questions of cost and affordability by the Saskatchewan public.

The Mandate for the Review

The mandate of the Review Committee is set out in the controlling legislation, **The Automobile Accident Insurance Act** R.S.S. c. A-35, s. 220 (Part VIII). Section 220(5) of the Act states as follows:

> *"The review committee shall review and report to the Lieutenant Governor in Council on all matters concerning this Part, the regulations pursuant to this Part, and the administration of this Part and the regulations made pursuant to this Part."*

The Committee considered this to be a broad mandate necessitating a complete review of Part VIII of the Act, which applies to "bodily injuries caused by an automobile arising out of an accident". This Part sets up the Personal Injury Protection Plan, including its general scope, the no-fault benefits provided under the Plan, and the procedures to be followed in claiming benefits. Part VIII also contains the provisions which preclude tort actions for personal injury in most cases but allows tort actions for economic loss in excess of benefits. The mandate thus covers all these matters, including the question of when a tort action for damages should be available to injured persons.

The mandate also speaks to the administration of the Personal Injury Protection Plan. The Review Committee was therefore required to examine the way in which the Plan has been implemented, including the customer service experienced by injured people in the process of obtaining benefits. The human elements of the process are critical to its effectiveness. The Review Committee therefore paid considerable attention to ways in which personal interaction within the Plan might be improved for the benefit of the Saskatchewan public and for the greater benefit of those who require services from the Plan.

The Chairperson of the Committee had the powers of a commissioner pursuant to **The Public Inquiries Act**, and the Committee could "receive and accept any evidence and information under oath or by affidavit or otherwise that it [considered] proper." Neither the Chairperson nor the Committee found it necessary to use any of the special powers they were granted.

The Review Committee

Over the period of the review, ten individuals were appointed as members of the Review Committee:

- Chair: Ken Cooper-Stephenson, Saskatoon (June 2000 to December 2000)
- Vice-Chair: Donna Larsen, Saskatoon (December 1999 to December 2000)
- Kevin Clarke, Regina (June 2000 to December 2000)
- Gail Graham, Prince Albert (December 1999 to December 2000)
- Don Grant, Regina (June 2000 to December 2000)
- Dr. Dennis Kendel, Saskatoon (June 2000 to December 2000)
- Dr. Murray Knuttila, Regina (June 2000 to December 2000)
- Carol Lafond, Muskeg Lake (December 1999 to December 2000)
- Honourable T.C. Wakeling, Q.C., Regina (Chair, December 1999 to April 2000)
- Dr. Stewart McMillan, Regina (December 1999 to April 2000)

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Values Guiding the Committee's Work

The Review Committee agreed that the review should be conducted within a framework of important values or guiding principles. These considerations helped the Committee assess the importance of issues and the appropriateness of alternatives.

Any system of rules responds to underlying values. This is no less so with respect to a system designed to assist persons who have suffered injury. Indeed, it was once said by a Canadian writer that:

> *"How any society responds to the needs of those who are disabled from earning and the dependants of those who are prematurely killed is surely one of the moral indicators of the state of its civilization."*[1]

The Committee recognized the diversity of views about the appropriate values and "moral indicators" to which reference could be made in this context. In the end, a system of compensation and rehabilitation must reflect the underlying values and common views of the society that that system attempts to serve. The relevant society for the purpose of evaluating Part VIII of **The Automobile Accident Insurance Act** comprises primarily the residents of Saskatchewan. They are the persons who are the most likely to be injured in automobile accidents in the province. And many of them are vehicle owners who are financing the Personal Injury Protection Plan through payment of insurance premiums.

Within the Saskatchewan society, as in almost all societies, is a wide range of viewpoints. This diversity is very apparent at an individual level. However, a community with a collectively strong cultural heritage may also espouse underlying values that are quite different from those the majority of society view. Ultimately, each individual holds to his or her own personal set of values, shaped as they are by the community context. All viewpoints must be respected and considered even if they cannot ultimately be given expression in the rules.

The Review Committee attempted to identify some of the most important values to which Saskatchewan people might make reference in assessing any plan designed to help those injured in motor vehicle accidents. The Committee identified the following as values that seemed to be the most important in guiding its appraisal of Part VIII of **The Automobile Accident Insurance Act**, and in the formulation of its recommendations:

- Rehabilitation;
- Individual responsibility;
- Deterrence;
- Loss spreading;
- Community responsibility;
- Equity and equality;
- Affordability;
- Practicality; and,
- Harmony.

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[1] T. Ison, "Human Disability and Personal Income", in L. Klar, ed., *Studies in Canadian Tort Law* (Toronto: Butterworths, 1977).

Rehabilitation: This value emphasizes restoration of the physical, economic, emotional and spiritual well-being of an injured person after the accident. It would suggest that the Plan provide resources to restore an injured person, as close as is reasonably possible, to his or her pre-accident state of well-being. The value would encourage the availability of comprehensive health services and the provision of financial assistance for expenses.

No-fault schemes tend to give particular emphasis to timely physical rehabilitation and restoration. Tort law's principles emphasize the idea of restoration through full compensation but only when fault in another has been proved.

Individual Responsibility: This emphasizes freedom of action and free choice of individuals, and responsibility for the foreseeable consequences of such action and choices. It might suggest that, as a matter of personal morality, people should bear the full consequences of their conduct. If a person's carelessness affects another person detrimentally, it might be said that the negligent person has a duty to provide financial assistance to the injured person by way of compensation. This is "corrective justice": the obligation of a person to correct an individual wrong to another. The value also addresses the injured person's responsibility. It would suggest that there should be a reduction of benefits or compensation if the injured person was partly responsible for the accident. It would also impose an obligation on the injured person to take all reasonable steps toward recovery.

The value of individual responsibility is given particular emphasis in a tort system, both with respect to the conduct of the at-fault party and that of the injured person. Personal responsibility can also be incorporated within a no-fault system, although it is given less emphasis in light of other values.

Deterrence: This is a form of accident prevention. It emphasizes measures that might be taken toward reducing the number of accidents through the structure of the compensation scheme itself. If an automobile accident scheme imposes a financial burden on persons or institutions who cause accidents, it may also serve to encourage them to be more careful in the future. As well, incentives to better driving can be provided by increased insurance premiums for those found at-fault.

Some people suggest that deterrence is integral part of tort law because the prospect of paying damages acts as an incentive to be careful. It can also form an indirect component of a no-fault scheme, because even though the benefits are paid out by the scheme without proof of anyone's fault, the scheme may surcharge the person at-fault through increased premiums.

Loss Spreading: This value, sometimes called "risk-allocation", emphasizes the need for groups rather than individuals to shoulder the costs of accidents. It suggests allocation of the financial burden to these groups or "risk pools", for example, the motoring public or the manufacturers of products. Loss spreading is a matter of "distributive justice": the obligation of society to distribute its wealth and costs fairly amongst its members. The value suggests that sectors of society which are in some manner connected to automobile accidents may be better placed to collectively shoulder or absorb any losses caused by their activities (following a theory of "enterprise liability"). As well, some groups may be profiting more than others from motor vehicle transport, and it can be argued that they should internalize the costs of the risks created by their enterprise (following a theory of "unjust enrichment").

Both tort law and no-fault systems pay attention to this value, but in slightly different ways.

Community Responsibility: This value further emphasizes that the welfare of injured persons is a collective responsibility – indeed, that it is the responsibility of the whole community. It takes the view that accidents are unfortunately almost inevitable consequences of a technological society, and that a society which reaps the benefits of motor vehicle travel has a responsibility to assist with its predictable casualties.

No-fault systems and "universal" systems, such as the New Zealand accident compensation scheme, give particular emphasis to this value.

Equity and Equality: Although these terms have various meanings for different people in different contexts, they emphasize the need for evenness of treatment for people who may have diverse needs and characteristics, and that every person deserves equal concern and respect. This may involve different approaches and different benefits for certain individuals or groups in order to achieve an equal result for them.

All systems respect this value, although in contrasting ways. The value is entrenched in the Canadian Constitution through the **Charter of Rights and Freedoms**, which governs all legislation and its implementation by governments and their agents. Section 15 of the Charter reads as follows:

> *"Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."*

This has been interpreted to require "substantive equality", which means real equality or equity in result, rather than "formal equality", which means sameness or equality in theory only. Some people need more assistance than others in order to reach an equal or equitable position of well-being.

Affordability: All systems of accident compensation or insurance have a cost. This value emphasizes the *overall cost* of providing benefits to persons injured in automobile accidents as well as the *relative cost* of different alternatives and different benefits. It should also pay attention to both immediate costs, such as the cost of the insurance premiums themselves, as well as secondary costs, such as the effect on health care costs if a scheme does not provide benefits, or losses through unnecessary protraction of the injuries. Savings achieved by deterrence of careless behaviour are also a cost element.

Cost-effectiveness is a consideration whatever other values are given focus and whatever scheme is chosen, because the use of resources for accident compensation and rehabilitation draws on money which would be available for other purposes.

Practicality: This focuses on the actual effectiveness of a particular insurance scheme and its implementation. It examines the processes and procedures through which benefits are allocated. It looks at final outcomes and compares the actual results that can be achieved for injured persons in the real world. It recognizes that some values may not be capable of being applied because of the practical difficulties of respecting them.

This value is linked with affordability and is given particular attention in no-fault schemes.

Harmony: This value attempts to balance and integrate other values in a manner that is acceptable as fair and just, viewing the situation from as many angles as possible. It recognizes the complexity of society. Conflict and conflict-resolution should respect the perspectives of all those involved in the situation. This includes not just the immediate actors and their extended families, but the local community and the wider society. It considers different socio-economic, cultural, spiritual and healing viewpoints and seeks as much post-incident harmony as can be achieved.

This value is "holistic" in outlook. It is adhered to by many indigenous communities in their treatment of injured people. It was also a historical underpinning of tort law, when appeasement of the parties was the goal. Modern alternative dispute resolution mechanisms, such as mediation and arbitration, also respect this value.

Every one of the above values was influential at some point in the Review Committee's deliberations

The Committee also took into account that the SGI Auto Fund administers the Personal Injury Protection Plan and is guided by five principles:

Universality – That any Saskatchewan resident injured in a motor vehicle accident in Canada or the United States is covered by the plan.

Compensation without fault – That benefits are paid regardless of who was at-fault.

Compensation for economic loss – That benefits are paid to cover the economic loss sustained by the injured person.

Indexation – That benefits are indexed to cover cost-of-living increases.

Health-related quality of life – That resources are dedicated to assisting injured persons to return to normal activities to the greatest extent possible as quickly as possible.

Tort and No Fault Schemes in General

The Personal Injury Protection Plan fits within a broad range of alternative approaches that might be adopted by a community as a way of addressing the problem of injuries caused by automobile accidents. These can be classified under five headings:

- Tort Law
- Pure No-Fault
- Modified Tort or "Add-On" Plan
- Modified No-Fault Scheme
- Universal Scheme

In the following paragraphs, we provide a brief explanation of each of these approaches.

Tort Law

Tort law gives the injured person a right to sue a person who was at fault in causing the injuries. The injured person (the "plaintiff" or "complainant") claims compensation from the at-fault party (the "defendant" or "tortfeasor"). This is not initially a claim by the injured person against an insurance company. Rather, it is a claim by one person against another for a wrong (a "tort") committed against him or her by that other person. If the injured person was also at fault, there is still a claim, but the award of damages will be reduced for "contributory negligence" and the reduction will reflect the relative degree of fault of the parties.

The compensation in a tort action is theoretically very complete, leading sometimes to extremely large awards. However, most cases are settled between the parties below the claimed compensation, and the plaintiff will have to pay his or her lawyer's fees and other expenses out of the damages awarded. As a result, in a large number of tort cases, the plaintiff will receive at best a little over half of the theoretical compensation.

Because people usually do not have enough money to pay tort damages if they are if they are found at fault, they often protect themselves by taking out third party liability insurance. In the automobile accident insurance field, such insurance is compulsory in all provinces in Canada. In Saskatchewan, the basic insurance is not only compulsory, but is provided by Saskatchewan Government Insurance, a Crown corporation that is in a monopoly position with respect to this insurance. The basic insurance covers claims against the owner or driver up to $200,000. The premium is paid by the owner of a vehicle annually as part of the cost of registering a vehicle, and is thus sometimes called plate insurance.

The Saskatchewan insurance covers the owner of the vehicle and any other person who drives the vehicle with the owner's consent. The injured person's claim, although nominally against the at-fault driver where there is one, is effectively against the driver's insurance company, and therefore against SGI. But this is not an insurance claim. It is a "tort claim" where the defendant is covered by liability insurance. The insurance makes the tort system work by providing money to satisfy judgements.

Although third party liability insurance covers the vast majority of claims, it can be deficient in cases where one or more persons are seriously injured in an accident. The $200,000 amount may not nearly be enough to provide the help that is needed. Additional funds may be available where the party at fault had purchased optional "extension" insurance for more coverage, or where that party was working for a company when the accident happened, because employers are automatically liable ("vicariously liable") for the negligence of employees. Another situation where additional resources may be available is where a "third party" is liable. However in all these cases there is an ultimate cost impact on the public over and above the basic plate insurance premium.

In approximately one-third of automobile accidents, however, there is no one to sue. This includes: two-vehicle accidents where the injured party was solely at fault; accidents involving wildlife; and single vehicle accidents.

Before 1946, Saskatchewan dealt with auto accident injuries through tort law, supplemented by the health care and social programs that were available to the general public. Currently, no province in Canada has a pure tort system for automobile accidents.

Pure No-Fault

In "pure" no-fault accident insurance schemes, tort law is replaced by a system where all those injured in motor vehicle accidents can claim benefits from the scheme whether or not they can prove that another driver was at-fault and, for the most part, whether or not they themselves were at fault. In some situations, such as in the case of an injured person's impaired driving, the benefits are reduced or eliminated if the injured person is at fault. However, the injured person's insurance premiums may be increased, and conduct remains punishable under the criminal justice system when applicable.

A no-fault automobile accident insurance scheme is funded in a similar way to tort third-party liability insurance. Each vehicle owner pays a premium to register and operate the vehicle. The no-fault insurance is therefore part of the plate insurance. Although a no-fault scheme can be called an insurance scheme, it protects many more people than those who actually pay for the insurance. It protects, for example, passengers, pedestrians and cyclists, or almost anyone who suffers bodily injury arising out of an motor vehicle accident. No-fault schemes can be viewed as part of a larger social program. They are in essence a form of *social* insurance. Quebec has had a "pure" no-fault scheme for over 20 years, and Manitoba for some 7 years.

The most important features of pure no-fault schemes are:

- They are universal, in the sense that the benefits are available to almost all persons injured in traffic accidents irrespective of fault and irrespective of who paid for the insurance;
- The procedures for claiming benefits are relatively simple and inexpensive; and,
- The benefits are available to help the injured person immediately, often within hours or days of the accident.

No fault schemes eliminate the process of proving that another person was at fault, and often that the injured person was *not* at fault. In light of this, pure no-fault schemes are able to pay more out of the premium dollar to injured persons. It is estimated that at least 80% of the money that the public pays for no-fault protection actually goes to injured persons. The Committee understands that only about 50% to 55% of money paid into the tort scheme reaches injured people.

Saskatchewan has never had a "pure" no-fault scheme for automobile accident insurance. However, pure no-fault is not a new concept in the province. The workers' compensation schemes in Canada, including the one in Saskatchewan, are all in essence no-fault plans covering injuries suffered in the workplace. Also, the Personal Injury Protection Plan adopted in 1995 did move in the direction of "pure" no-fault, since tort actions under the Plan are very limited.

Modified Tort or "Add-On" Plans

Between the two extremes of pure tort and pure no-fault are compensation systems which combine both tort and no-fault. Where there is an "add-on" plan, the primary focus is on tort claims. To supplement tort actions, limited no-fault benefits are provided. As under a pure no-fault scheme, the benefits are claimable whether or not the injured person can show that another driver was at fault, and, for the most part, whether or not the injured person was at fault. In this regime, the injured person has a "tort claim" for "damages", and a no-fault "insurance claim" for "benefits". As described earlier, the first jurisdiction in the world to have an add-on plan supplementing tort law was Saskatchewan, in 1946.

Where there is an "add-on" plan, no-fault benefits tend to be very limited. This is so in all such plans in existence in Canada, the United States and Australia, although the original Saskatchewan plan was quite generous. The limited no-fault benefits help both at-fault and not-at-fault injured persons. If there is a tort claim as well as a claim for benefits, the value of the benefits paid or payable is deducted from the damages in the tort claim. The injured person is not compensated twice.

Saskatchewan's "add-on plan" extended from 1946 to 1994. In 1994 maximum benefits for medical care were $10,000; for income replacement or loss of homemaking capacity, a maximum of $150 per week for two years ($15,600 in total) with a lifetime income loss extension for catastrophic injuries; and for intangible loss, a maximum of $10,000. Death benefits were $10,000 for the primary dependent (usually a spouse), and $1,500 each for secondary dependants (e.g. children). $5,000 was available for funeral expenses. Under the plan in place up to 1994, a driver who was driving while impaired was eligible for no-fault benefits, but was also subject to a claim back by SGI for the amount of any tort damages it had paid to the injured person. The impaired driver was also responsible for any damages caused, so he or she was effectively disqualified from being insured.

Modified No-Fault

A "modified" no-fault system is also a hybrid that combines both tort law and no-fault features. The primary focus is on no-fault injury benefits, but there are limited circumstances where the injured person is entitled to a tort action. As in the case of a "pure" no-fault plan, all persons injured in an auto accident can claim benefits from the scheme whether or not they can prove that another driver was at fault and, for the most part, whether or not they themselves were at fault. In some instances, injured persons' benefits may be reduced because of their fault, but this is only in cases such as where the injured person was driving while legally impaired. However, the injured person's insurance premiums may be increased in the future, and his or her conduct is punishable under the criminal justice system if applicable.

Modified tort systems vary in the manner in which they are supplemented by tort. They often allow tort actions for one particular type of loss, but disallow them for other losses. And they may require a threshold, which means that an action is only allowed if the claim is in excess of a certain limit. The threshold may be a "dollar threshold", whereby a tort action is allowed only if the claim exceeds a predetermined amount; or it may be a "verbal threshold", whereby the tort action is allowed if the injured person satisfies a specified description, such as "serious physical impairment". The tort claim under these schemes may be against at-fault drivers, and may additionally be against negligent third parties.

Saskatchewan's Personal Injury Protection Plan, in place since 1995, is a modified no-fault plan. It allows for tort actions for economic loss in excess of benefits, but with a dollar threshold for income loss. A tort action is allowed against the driver or any other person (or institution) at fault for all expenses, medical and otherwise, resulting from the accident. This includes loss of care giving capacity: the loss of the ability to take care of persons who are under 16 years of age or are regularly unable to hold any employment. For these expenses, the allowable tort action is for losses in excess of those which are covered by the benefits under the Plan.

The allowable tort action also covers income loss. However, this is currently restricted to losses in excess of $56,855, the current maximum insurable earnings under the no-fault part of the Plan. The tort action for loss of income is available to only a small number of injured persons as the maximum insurable earnings covers the vast majority of wage earners in the province. In practice, the tort action under the Plan has only very rarely been used.

It is this "modified no-fault plan" which is the subject of review in this report.

Universal Plan

A "universal scheme" is a pure no-fault scheme which is not restricted to automobile accidents but covers the whole range of personal injury. It groups together a no-fault auto accident plan with workers' compensation and extends the coverage of these systems to injuries caused in any manner at any time. It provides benefits to all persons who suffer injury whether such injuries are incurred in an automobile accident, at work, by medical error, at home, or by any other traumatic incident. In a universal scheme, tort actions for personal injury are completely abolished in favour of the no-fault approach to helping people who have suffered personal injury. A universal scheme makes the treatment of injuries part of the system of social programs, with the result that litigation against individual at-fault persons is rendered unnecessary.

New Zealand has had a "universal scheme" since 1974, following the widely profiled and innovative "Woodhouse Report". It remains the only such plan in any jurisdiction whose origins are founded on the English common law. A universal plan might be extended to disease and illness as well as injury. Such a plan was once given serious legislative consideration in Australia, but it was never implemented.

History Leading up to Current Situation

In 1944, an Act of the Saskatchewan Legislature established the Saskatchewan Government Insurance Office. This Crown corporation began offering general insurance to the residents of the province in May of 1945. At this time, only 12% of Saskatchewan drivers carried automobile insurance, and a tort system was the only means of compensation available to anyone injured or killed as a result of an automobile accident. The tort system provided that the injured person had a right to sue a person who was at fault in causing the injury.

In 1946, the Legislature charged the Saskatchewan Government Insurance Office with administering **The Automobile Accident Insurance Act**. This legislation was the first of its type to provide compensation, regardless of fault, to people who were injured or killed in automobile accidents. Saskatchewan became the first jurisdiction in the world to adopt what became characterized as an "add-on" plan to supplement the tort system. Under this type of plan, a person injured in an automobile accident has a tort claim for damages and also receives no-fault benefits.

In 1949, Saskatchewan Government Insurance Office added third party coverage to the insurance plan. This was consistent with the liability insurance that was compulsory in other provinces and many American states. No other major changes in the add-on insurance plan were made until the end of 1994.

Currently, SGI has a mandate to supply all compulsory motor vehicle insurance, and operates three separate lines of business:

- The Auto Fund provides compulsory vehicle licensing and insurance;
- SGI Canada provides general insurance (house, farm, and extension auto); and,
- SGI Canada Insurance Services Limited provides products to consumers external to Saskatchewan.

The Auto Fund administers basic compulsory automobile insurance and licenses. The Auto Fund operates on a break-even basis. Unlike other commercial Crown corporations, the Auto Fund does not pay dividends to the provincial government. Like other insurance companies, SGI uses the funds raised through insurance premiums paid by registered vehicle owners to pay for claim costs related to vehicle damage and personal injury claims.

In 1993, a study prepared for SGI by Sobeco Ernst and Young highlighted a number of concerns with the add-on insurance program:

- Personal injury benefits were lower than most other jurisdictions and had not kept pace with inflation nor with the average Saskatchewan wage;
- Injured persons with similar injuries were treated differently, depending on who was at-fault;
- Rehabilitation benefits for victims of automobile accidents were negligible compared to other jurisdictions such as Ontario, British Columbia, and Quebec;
- The number of accidents per year remained relatively constant since 1984; however, injury costs increased at an average rate of 12% per year. The Sobeco Ernst and Young report attributed these increases to larger court awards, new types of damage (such as loss of homemaking capacity), the increase in the maximum liability coverage from $100,000 to $200,000, and an increase in the number of injured persons seeking legal assistance. Precedent setting court awards in 1990 and 1991 had resulted in further dramatic jumps in costs and were expected to lead to significant future increases in the cost of settling liability claims.
- A number of relatively minor injuries account for almost half of the total liability claims paid.

The Sobeco report concluded that if these issues were left unaddressed, Saskatchewan drivers could face annual increases of 6% to 12% for injury benefit coverage. The report recommended SGI adopt a system with substantial personal injury benefits where the individual cannot sue. This report lead to a rethinking of the automobile insurance plan in the province, and the province moved from an add-on system to a modified no-fault system.

"In 1946, the Legislature charged the Saskatchewan Government Insurance Office with administering The Automobile Accident Insurance Act. This legislation was the first of its type to provide compensation, regardless of fault, to people who were injured or killed in automobile accidents. Saskatchewan became the first jurisdiction in the world to adopt what became characterized as an "add-on" plan to supplement the tort system."

The Personal Injury Protection Plan

The Personal Injury Protection Plan (PIPP) came into effect in Saskatchewan on January 1, 1995. The Plan covers the personal injury aspect of an automobile accident. Under the Plan, every Saskatchewan resident injured in an automobile accident anywhere in Canada or the United States receive personal injury benefits, regardless of fault. Although injury benefits are distributed on a no-fault basis, the Personal Injury Protection Plan does not affect the vehicle damage coverage. The person at fault in an accident pays a deductible for vehicle damage and receives an insurance premium surcharge on his or her vehicle license.

Saskatchewan Government Insurance has indicated that the Auto Fund implemented the Personal Injury Protection Plan to meet three major goals:

- *Improve Injury Benefits:* Prior to 1995, medical and rehabilitation coverage was limited to $10,000 and income replacement benefits for long term injured persons were limited to $200/week. These benefits were not indexed to inflation. The Personal Injury Protection Plan is to ensure that those injured in auto accidents have access to adequate benefits.
- *Enhance Fairness:* Prior to 1995, people with similar injuries received different compensation depending on who was responsible for the accident. Under the Personal Injury Protection Plan, spending is to be directed to improving the health related quality of life of persons injured in automobile accidents while protecting them against major economic loss.
- *Stabilize Injury Claim Costs:* On a loss year basis, injury liability costs had risen from $89 million in 1990 to over $148 million by 1994. SGI maintains that the introduction of the Personal Injury Protection Plan has stabilized injury costs. Over the period 1990 to 1994, the average increase in injury liability costs was 14% annually. Since 1995, the average increase in Personal Injury Protection Plan costs has been 5% annually.

SGI Initiatives Since 1995

A number of initiatives within SGI since 1995 are relevant to a review of the Personal Injury Protection Plan.

Consumer feedback

Since the implementation of the Personal Injury Protection Plan 5 years ago, SGI has tracked consumer feedback and concerns and consulted with care providers about how the Plan might better serve the needs of those injured in motor vehicle accidents in Saskatchewan. This external perspective has been helpful to SGI as it practises ongoing self-examination in order to continuously identify opportunities for improvement. As a result of these efforts and follow-up actions, SGI has made and is making ongoing adjustments and changes to the administration of the Plan.

Internal review

In preparing for this legislated review process, SGI considered the feedback it had received from individuals and groups over the years. The corporation then supplemented this understanding of issues with an internal review with its staff to identify matters for consideration in the review process. The corporation's submission to the Review Committee included alternatives and recommendations for 44 potential improvements to the Personal Injury Protection Plan. SGI also provided actuarial estimates of the cost implications of the recommendations and a number of the more significant alternatives, and identified important matters on which no recommendation was being made. The detailed submission also included helpful information on plans in place in other jurisdictions.

The Review Committee appreciates SGI's willingness to respond on a timely and comprehensive basis to any request from the Committee for further information or explanation throughout the review process. The corporation's co-operation was important to the Committee's ability to complete the review.

Support for Research Initiatives

SGI has provided support to the University of Saskatchewan in conducting a five-year research project into the assessment and treatment of soft tissue injuries. The project has been recognized by the World Health Organization's Collaborating Centre for Neurotrauma in Sweden. As part of this initiative, SGI provided a $911,000 grant to the University of Saskatchewan to research the effects that a tort system and a no-fault injury system have on the health of people injured in auto collisions.

An article based on this study funded by SGI has been profiled by the corporation as an important result of its investment in research. **The New England Journal of Medicine** Volume 342, Number 16 (April 20, 2000) included the article ***Effect of Eliminating Compensation for Pain and Suffering on the Outcome of Insurance Claims for Whiplash Injury***. The publication prompted substantive interest and comment from many sources over much of the period of the Review Committee's work.

The Review Committee received a number of submissions commenting on the study, and three members of the study team made a presentation to the Review Committee at its public consultation meeting in Saskatoon in June. Following that meeting, the Committee considered the study in further discussions.

The Committee did not reach consensus on the study and did not rely on it in forming any of the conclusions or recommendations included in this report.

Actions of Interested Groups and Individuals

The very fact of a prescribed legislative review of the Personal Injury Protection Plan was an impetus for a number of interested groups and individuals to take action. Some prepared to take part in this formal mechanism through which they could voice their opinions and make suggestions and recommendations. While the interested groups and individuals were diverse, those that were particularly active through the course of the review were:

- Injured persons, as individuals and as groups (notably the Coalition Against No-Fault);
- Lawyers, as individuals and as groups (notably the Joint No-Fault Committee of the Law Society of Saskatchewan and the Canadian Bar Association, Saskatchewan Branch); and,
- Health care service providers.

Injured Persons

The review generated response from injured people who had personal experience with the Personal Injury Protection Plan. Some of these people were supporters of the Coalition Against No-Fault group (the Coalition). The Coalition was originally prepared to make a detailed presentation to the Review Committee, but withdrew early in the process. Despite invitations from the Committee to reconsider this decision, the Coalition chose not to make a submission as a group. However, the Committee did consider the group's report, **Restoring Rights and Saving Lives: Auto Insurance Improvements for Saskatchewan - the Premier Option.**

In its public statements and its report, the Coalition was critical of the Personal Injury Protection Plan, the criminal justice system, highway traffic authorities, the driver licencing system, municipalities, and others involved in highway safety. A number of the Coalition's stated concerns have some relevance to aspects of the Review Committee's work – for example, the fact that the health care and justice systems should not be viewed in isolation when considering the impact of motor vehicle accidents. The Committee recognized that a perceived lack of justice can have a direct effect on the injured person's progress in recovering.

Generally, however, reforms in the areas of concern described by the Coalition were not within the Review Committee's mandate under **The Automobile Accident Insurance Act**. Accordingly, the Committee considered the Coalition's concerns only where they were applicable.

Lawyers

Lawyers were also interested in the review process, and a number of individual lawyers made presentations to the Review Committee. The Joint No-Fault Committee of the Law Society of Saskatchewan and the Canadian Bar Association, Saskatchewan Branch (the Joint Committee) was originally prepared to make a detailed presentation to the Review Committee, but withdrew early in the process. Despite invitations from the Review Committee to reconsider this decision, the Joint Committee chose not to make a submission as a group. However, the Review Committee did consider the October 1997 report of the Joint Committee: **A Review of No-Fault Automobile Insurance in Saskatchewan.** The Review Committee also considered a report completed for the Joint Committee by Kroll Lindquist Avey: **A Study of the Automobile Insurance System (No-Fault) in Saskatchewan, August 2000.**

In its public statements, the Joint Committee was critical of how the Personal Injury Protection Plan was introduced, specific features of the Plan, and the impact of limiting the availability of tort actions. The Kroll Lindquist Avey report included a financial analysis of the pre-1995 and post-1995 periods.

Health care service providers

Health care service providers were consulted in the preliminary work leading up to the detailed design and implementation of the Personal Injury Protection Plan, and have been actively involved in the provision of services since 1995. The service providers therefore have a good understanding of the issues and considerations involved in helping injured persons with their rehabilitation and recovery. They are as well a source of continuing advice to SGI on the operation of the Personal Injury Protection Plan. Many individuals and organizations who provide health care services made submissions to the Review Committee.

A Multi-disciplinary Approach

In light of the nature of the inquiries called for by the review mandate, the Committee recognized that it would need to incorporate a multi-disciplinary approach in its deliberations. Knowledge and experience important to the process included the areas of:

- Law and the legal system;
- Economic analysis;
- Insurance principles and practices;
- Actuarial analysis;
- Health care services, including treatment and rehabilitation of injuries;
- Vocational rehabilitation to assist in a return to work;
- Human resource management;
- Business processes;
- Customer service;
- Provision of services to culturally diverse populations; and,
- Public sector program and policy analysis and evaluation.

The review also included reference to concepts in the fields of sociology, and moral and political philosophy.

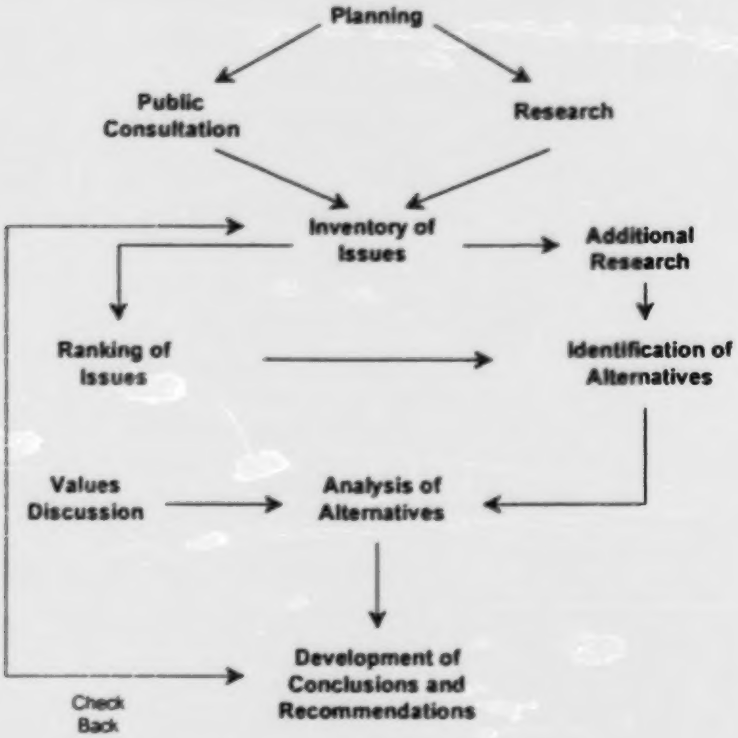
The Review Committee approached its task with this multi-disciplinary perspective in mind, drawing on the knowledge and expertise of the individual Committee members and supplementing this where necessary and appropriate. For example, the Committee contracted with an independent actuary to conduct analysis of alternative recommendations. The Committee also benefited from the knowledge and expertise evident in presentations and submissions from individuals representing a number of institutions, organizations, and professions. And, importantly, the Committee considered the knowledge and expertise of injured persons themselves, who shared their personal experiences and helped the Committee understand the impact of the Personal Injury Protection Plan on individuals.

A Methodology focused on Consultation, Expert Advice, and Research

The Review Committee set about its work in January of 2000, setting up an office in Regina with a small support staff to handle administration, logistics, contract management, communications, and research. An early priority was the establishment of mechanisms for interested people to contact the Review Committee: a toll-free telephone number; a fax number; and an e-mail address.

The Committee staff also set up a web site with basic information about the Review Committee and the review process. In order to inform the public about the review process and how to contact the Committee, advertisements were placed in newspapers in the province in March, 2000.

An overview of the review process followed by the Committee is illustrated in the following diagram:


Planning
Public Consultation
Research
Inventory of Issues
Additional Research
Ranking of Issues
Identification of Alternatives
Values Discussion
Analysis of Alternatives
Development of Conclusions and Recommendations
Check Back

The Committee used a number of tools to conduct its review, focusing on consultation, expert advice, research, and communications.

Consultation

As a matter of priority, the Review Committee set out to listen to injured people describe their experiences with the Personal Injury Protection Plan. Our public efforts on this front involved consultation meetings in 13 locations across the province in June, 2000: Saskatoon, Regina, Moose Jaw, Prince Albert, Estevan, Weyburn, Swift Current, Kindersley, Creighton, Buffalo Narrows, La Ronge, Melfort, and Yorkton.

The Committee heard extremely helpful presentations by injured people at the meetings across the province. Some of the injured people who spoke to us were very distressed or angry at the way in which their experience after the accident had unfolded.

In some cases, individuals felt that they would have fared much better under the system in place prior to 1995, although this was rare. Some of the concern and anger was over inadequate responses of the criminal justice system, particularly with respect to impaired driving. Sometimes this anger was directed at the particular driver who had been responsible for the accident in which a loved one had been injured or killed.

As well, some of the anger was simply at the very fact of the event and the injured person's condition, and that modern medicine and technology could not fully repair the injuries. In other presentations, the Committee heard praise for the way in which the Personal Injury Protection Plan had helped the injured person put his or her life back together.

Many severely injured people spent a huge amount of time and effort in setting out and documenting their stories. Their presentations to the Committee were often made with substantial emotion and with deeply-felt concern. For some, the presentation of their stories to the Review Committee was therapeutic. We were told this by a number of presenters, who felt that no one had previously listened and paid attention to the details of their situations.

The consultation process was not limited to the public meetings with the Committee. To ensure a comprehensive approach, the Committee decided to contact directly each person that had experience with the Plan since it was put in place in 1995. To accomplish this, we sent a letter to each of more than 35,000 individuals. To protect confidentiality, we asked SGI to mail the letter on our behalf so that we did not have the names and addresses of the people involved.

We informed the 35,000 individuals of the review process and asked them to assist us. Specifically, we asked them two questions:

- What was your experience with the Personal Injury Protection Plan?
- Do you have any suggestions for the future of the plan?

The response to our letter was quick and significant. We received more than one thousand phone calls, letters and e-mails from people to share with us their experiences and their suggestions for the Plan's future.

Through the meetings and the response to our letter, the Committee was able to discover what many people felt were the strengths and deficiencies in the Plan, and to identify specific issues that needed to be addressed in our subsequent analysis, conclusions, and recommendations.

The Committee members are extremely grateful to each and every person who made the effort to contact us and provide us with an understanding of his or her personal interaction with the Plan. The insights of people who were directly affected by an injury and had claimed benefits under the Plan have been an important part of the Review Committee's discussions.

In addition to those who had been injured in an automobile accident, others were thought by the Committee to be an integral part of a review of the Personal Injury Protection Plan. The Committee therefore sought the perspectives of health care providers who provide services to injured persons. A number of organizations and health care professionals submitted thoughtful and helpful comments that we have carefully considered in our deliberations.

Advocacy groups were also helpful to the review, with a number of these groups submitting their own assessment of the Plan and its impact and providing the Committee with suggestions for improvement. The groups presented views from a number of perspectives, including injured persons, health care providers, professional associations, and municipal government.

The Committee also wanted to understand the perspectives of the people who perform the Personal Injury Representative (PIR) role for the insurer. With the cooperation of SGI, its employees' union, and individual employees, we met with approximately 25% of the Personal Injury Representatives (PIRs). Through discussion with these individuals, we wanted to gain a fuller appreciation of how they carry out their responsibilities and to obtain their suggestions for potential improvements in the Personal Injury Protection Plan.

The Committee was greatly appreciative of this dialogue and found value in rounding out the major people perspectives relevant to a review of the Plan. The insurer's representatives, the health care providers, advocacy groups, and the injured persons all contribute to the quality of the three relationships that are fundamental to the fulfillment of the Plan's objectives:

- The relationship between the insurer and the injured person;
- The relationship between the injured person and health care providers; and,
- The relationship between health care providers and the insurer.

These relationships need to work well in order for the system to work effectively. In some cases, additional relationships will be involved – such as a lawyer playing an advocacy role for an injured person in dealing with the insurer.

Expert advice

The Committee determined that it required assistance in the form of expert advice in three areas;

- Rehabilitation case management;
- Actuarial advice and analysis; and,
- Communications advice and assistance.

Rehabilitation case management

During the review process, the Review Committee identified case management as an important consideration. In order to assess the performance of the Personal Injury Protection Plan in this area, the Review Committee contracted William M. Mercer Limited (Mercer) to evaluate SGI's rehabilitation case management and adjudication processes. Mercer defines case management as:

> *"The identification, authorization, monitoring, and co-ordination of benefit payments, goods and services to a disabled person to ensure an early return to work and/or the maximum medical improvement."*

Mercer compared SGI's rehabilitation case management practices to the practices of the group disability insurance industry. Mercer's consulting team has worked directly with insurers across Canada, including no fault automobile insurers. The team specializes in the technical evaluation of issues such as:

- Adjudication;
- Injury management;
- Identification of rehabilitation candidates;
- Coordination of rehabilitation services;
- Monitoring of rehabilitation services; and,
- Use of vocational rehabilitation.

Mercer evaluated SGI's rehabilitation case management based on the firm's experience with disability insurers, no-fault automobile insurers, and specifically with SGI. Mercer had developed SGI's case management model in 1995-1996 and was well positioned to assess how the model and case management practice had evolved since that time.

Mercer consultants reviewed 101 injury files to assess case management performance under the Personal Injury Protection Plan. The files were randomly selected from the following categories:

- Date of loss greater than 36 months ago;
- Date of loss less than 12 months ago;
- Date of loss between 12 months and 36 months; and,
- Catastrophic injuries.

In each category, Mercer included a sample of claimants who received Income Replacement Benefits (IRB) and a sample that did not receive Income Replacement Benefits.

Mercer's report to the Review Committee is included in Appendix B.

Actuarial advice and analysis

The Review Committee required the expertise of a consulting actuary to analyze the financial impact of any recommendations and provide expert advice throughout the Committee's deliberations. The Review Committee received Expressions of Interest from three firms and selected PricewaterhouseCoopers LLP (PWC) as the successful actuary. PWC is the largest actuarial consulting firm in Canada, and has experience with the automobile insurance systems in Ontario, Alberta, Quebec and Saskatchewan.

The actuarial work was performed in accordance with the standards of practice of the Canadian Institute of Actuaries.

PWC's report to the Review Committee is located in Appendix C.

Communications

The review work involved a range of communications activities, particularly in the public consultation process. The Committee engaged Brown Communication Group in Regina to provide advice and assistance as required throughout the review process.

Research

The Committee endeavoured to gain an early understanding of Part VIII of **The Automobile Accident Insurance Act**, the Personal Injury Protection Plan's structure and operation, the provisions of personal injury insurance plans in other jurisdictions, and the range of tort law and no-fault considerations involved in personal injury rehabilitation and recovery.

To gain this understanding, the Committee acquired a significant amount of research materials and examined current literature in the major fields associated with an automobile insurance compensation plan, including:

- All types of insurance plans;
- Tort law;
- Law and public policy;
- Benefits;
- Claims; and,
- Injury and rehabilitation.

A bibliography of the references the Review Committee gathered throughout the review process is included in Appendix D.

"As a matter of priority, the Review Committee set out to listen to injured people describe their experiences with the Personal Injury Protection Plan."

Organization of the Report

The Committee prepared this report to clearly explain its findings and recommendations. The report is structured and organized based on the legislative mandate and the multi-disciplinary nature of the review. It makes a logical division of issues and considerations based on four broad areas:

No-Fault and Tort Law

This is addressed in Chapter 2 and involves the fundamental question whether the *primary response* to persons injured in automobile accidents should be through no-fault benefits or through tort law, or through some combination of these. It includes the role tort should play if the Personal Injury Protection Plan is maintained and also an examination of particular areas where change is recommended.

Benefits

These are dealt with in Chapter 3, which includes discussion and recommendations with respect to the character and level of no-fault benefits under the Personal Injury Protection Plan, including benefits for rehabilitation, expenses, income replacement, loss of caregiving, and intangible loss.

Process

This is dealt with in Chapter 4. It includes the processes and procedures through which injured persons obtain benefits under the Personal Injury Protection Plan, including claims processes, case management, adjudication, appeal procedures and access to the courts.

Service

This is dealt with in Chapter 5. It includes the nature and quality of customer service that should be provided to injured persons.by SGI in administering the Personal Injury Protection Plan, and by health providers functioning under the auspices of the plan. Chapter 5 also includes considerations related to the provision of information to the public and service to the north and rural areas of the province.

The Committee also considered a number of issues that were not directly related to the review mandate or the four primary areas addressed in Chapters 2 through 5. Chapter 6 addresses these matters separately.

The various areas addressed by the Committee are interrelated. For example:

- Expansion of no-fault benefits leads inevitably to a reduced role for tort actions, since many of the compensatory goals of tort law will already have been satisfied. In contrast, a reduction of benefits leads logically to an expanded role for tort law to fill the void.
- If a greater focus was placed on tort law, the delay in the process involved in making a tort claim would create a need for more efficient and immediate no-fault benefits.
- Deficiencies in customer service might indicate the need for an enhanced appeals process.

The Committee was aware that its recommendations were frequently connected and interdependent, and that its recommendation under one topic might directly affect a recommendation under another.

The Committee therefore went through a process of revision and rethinking of its separate recommendations in light of its consideration of topics in different areas. As a result, the report should for the most part be read as an integrated whole in which many recommendations are interdependent.

"The Committee prepared this report to clearly explain its findings and recommendations. The report is structured and organized based on the legislative mandate and the multi-disciplinary nature of the review."

Chapter 2 — No-Fault and Tort Law

This chapter addresses issues related to the tort law and no-fault aspects of the Personal Injury Protection Plan and insurance schemes generally, including the choice of emphasis on no-fault benefits over tort law as the primary focus for providing assistance to injured persons. The chapter considers recommendations with respect to the tort action for economic loss under Section 103 of **The Automobile Accident Insurance Act**; tort actions against third parties, including health professionals and institutions; and tort actions where the driver was using a vehicle deliberately to harm another person or was impaired at the time of the accident.

The General Type of Scheme to Adopt

Recommendation

That Saskatchewan continue with its Personal Injury Protection Plan with improved benefits and service, and with an enhanced role for tort law.

The current Personal Injury Protection Plan focuses primarily on generous no-fault benefits, and it supplements these with a tort action for economic loss in limited circumstances. The availability of a tort action modifies what would otherwise be a pure no-fault scheme. The Review Committee was strongly in support of continuing with this basic structure, but was of the view that the no-fault benefits under the Plan should be improved and that there should be an increase in the number of situations where a tort action is allowed.

The Review Committee considered a range of alternatives to the basic structure of the Personal Injury Protection Plan. The five alternatives (described in more detail in Chapter 1) were:

- *Pure Tort Law.* Tort law gives the injured person a right to sue a person who was at fault. If the injured person was also at fault there is still a claim, but the award of damages will be reduced according to the relative degree of fault of the parties.
- *Pure No-Fault.* A pure no-fault scheme gives benefits to injured persons whether or not they can prove that another driver was at fault and, for the most part, whether or not they themselves were at fault. It completely replaces tort law as a vehicle for helping those injured in automobile accidents.
- *Modified Tort or "Add-On" Plans.* This type of tort scheme was in place in Saskatchewan prior to 1995. Where there is an add-on plan, the primary focus is on tort. However, to supplement tort, limited no-fault benefits are available. They usually deal with only minor accidents, and the claims procedures are very simple.
- *Modified No-Fault.* A modified no-fault plan is another tort/no-fault hybrid, but one where the primary focus is on no-fault. Substantial benefits are provided which cover most of the ground of tort law but which are available to almost all injured persons without proof of fault by another driver. However, there is a limited right to sue in tort to supplement the no-fault benefits where another person was at fault.
- *Universal Schemes.* A universal scheme is an extended pure no-fault plan. It provides benefits to all persons who suffer injury whether such an injury is suffered in an automobile accident, at work, by medical error, at home, or by any other traumatic incident. Tort law is completely replaced by the scheme.

The Review Committee considered these alternatives, and discussed variations on the five models. The Committee supports a "modified no-fault" plan as the basic structure of the existing Personal Injury Protection Plan. In reaching this conclusion, the Committee considered a broad range of views and advice. The Committee also considered the values it had identified as potentially underpinning a scheme to assist injured persons.

What we heard from injured persons

The Review Committee heard from members of the public, many of whom had been injured in automobile accidents, who were concerned about what they understood were the "values" of a modified no-fault plan. They wanted an increased emphasis on individual responsibility of at-fault persons, and increased focus on the pain and distress experienced by injured people in the aftermath of accidents, particularly with respect to whiplash and other soft-tissue injuries. They felt that such a focus should be at the expense of benefits that were directed at the rehabilitation of at-fault drivers, particularly impaired drivers.

On the other hand, many of the injured people who made their views known to the Committee were unhappy at how the no-fault scheme had functioned with respect to their injuries, rather than that it existed as a substitute for tort law. Some of their emotion was simply directed at the very fact that without fault on their own part they had been seriously injured or lost a loved one in a fatal accident. However, some injured people indicated to the Committee that their anger or distress was a result of how they felt they had been treated under the present system, but this concern did not necessarily lead to the conclusion that there should be a return to the tort system. Indeed, few injured persons suggested a return to the right to sue in tort.

The Committee also heard from people who were very positive about the Personal Injury Protection Plan. Individuals commented on the immediacy of benefits and access to rehabilitative services. As well, some commented that with the current system, the dollars were getting to the people who needed them the most: injured persons.

What we heard from organizations

The Review Committee also received many submissions regarding the Personal Injury Protection Plan from organizations and institutions. They offered their comments on both strengths and weaknesses of the Plan, and provided a range of recommendations for improvements.

The Review Committee also considered reports and publications of the Joint No-Fault Committee of the Law Society of Saskatchewan and the Canadian Bar Association Saskatchewan Branch (the Joint Committee). The Joint Committee indicated that it favoured a return to a "modified tort" system similar to the system in place immediately prior to 1995. The Review Committee heard from individual lawyers as well, who suggested improvements to the current scheme but did not all suggest a return to a tort-focussed model.

Values underpinning the primary recommendation

The Review Committee's primary recommendation also follows from the Committee's consideration of the values that might underlie any automobile accident insurance plan (see Chapter 1).

The Committee strongly supported the emphasis on *rehabilitation*. This involves the dedication of resources to assisting an injured person to return to normal activities to the greatest extent possible. It also involves compensation and assistance without enquiry into whether there was another person at fault, or whether the injured person was at fault.

The Review Committee also gave significant emphasis to the value of *community responsibility*. This value implies collective concern for the fate of persons injured in automobile accidents. Although most accidents can be prevented, a no-fault plan takes the position that accidents are a part of the community fabric. Even if the community should not be held responsible for irresponsible activity, it can be argued that it should remain responsible to assist and help those who are affected.

The question of *affordability* was also a significant factor. The tort system of compensation involves a very expensive process. Even where it might be thought that a lawsuit represents a justified moral response to an automobile accident, the Committee considered the cost involved in proving fault may be prohibitive. The Review Committee felt it was preferable to use the money available to directly help all injured persons with their core income loss and rehabilitation.

The Review Committee also emphasized the value of *practicality*. The Committee's view was that no-fault benefits are immediate and can be delivered through a relatively simple process, particularly where Personal Injury Representatives are attuned to the practical needs of an individual injured in an accident. A no-fault scheme committed to helping injured people as best it can is, in most cases, a far more pragmatic and effective mode of addressing the situation. By contrast, the Committee understands the tort system results in a delay in the injured person receiving assistance. It frequently provides assistance long after it is needed. Although a tort action can be a satisfactory solution in certain circumstances, and it may provide necessary funds as well as a sense of closure, this is unquestionably the exception rather than the rule in comparison with what can be achieved by a properly funded and administered no-fault scheme.

The emphasis on rehabilitation, community responsibility, affordability and practicality supports continuing a plan which gives substantial benefits for medical care and income loss on a no-fault basis.

The Review Committee was nevertheless of the view that the values lying behind tort law should give it a place in the overall scheme. First, the Committee agreed that the no-fault benefits for income loss under the Personal Injury Protection Plan should only be available up to a certain level, after which *individual responsibility* was of importance. Furthermore, if another person were at fault in the accident, the residual tort action under Section 103 of the Act enables injured persons to sue the responsible person for economic loss.

Tort law also acts as a *deterrent* of negligent behaviour. This is because the threat of a financially devastating lawsuit may make people or institutions more careful. In these circumstances, tort may actually *prevent* harm in the first place. This is first and foremost a humane consideration, but it must also be counted as a cost-saving factor. With respect to automobile accidents, there are deterrents other than the threat of a lawsuit, as a Canadian law professor stated:

> *"If the risk of injury to oneself, the inconvenience of accidents, the risk of damage to one's own car, the risk of fine, imprisonment or the suspension of a driving licence, are not sufficient inducements to safe driving, it would seem incredible to suggest that the risk of increase in one's insurance premium is likely to have much effect*[1]*".*

In addition, there is the risk of injury to one's passengers (perhaps one's family) or pedestrians, and the knowledge that one would have to live forever with the memory of having caused serious injury or even the death to another person. However, where institutions are concerned, such as auto manufacturers, deterrence may have some significant impact on behaviour.

Tort law also sometimes functions to spread the impact of an injured person's rehabilitation among a wider section of the community than does a no-fault scheme. The Personal Injury Protection Plan fastens the cost of injuries on the motor-vehicle-owning public. The tort scheme stretches wider, so that others concerned in road safety have to pay when they do not act responsibly. This serves as a means of *loss spreading*, of apportioning the cost among a larger cross-section of the community, at least where third parties are implicated in the action.

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[1] T. Ison, "Human Disability and Personal Income", in L. Klar, ed., *Studies in Canadian Tort Law* (Toronto: Butterworths, 1977).

It is likely that these values can be acknowledged without unduly affecting the affordability of compensation. It is the committee's understanding that by adding a tort action, the costs to the Auto Fund, and therefore the direct cost to motorists may be reduced. However, these costs can be expected to resurface elsewhere in the community as affected organizations increase charges to consumers in order to finance tort settlements.

Finally, the Committee also considered the value of *harmony*. A modified no-fault system provides a balance of various approaches and perspectives. It can better balance and integrate different values in a manner that, from an overall perspective, seems fair and just. Tort appears too centred on adversarial disharmony and blame and ignores some of the complexities of an accident situation. It polarizes its participants – litigants, families and lawyers alike – much more so than a no-fault system.

A holistic approach can, and the Saskatchewan modified no-fault plan does, allow litigation and personal responsibility at a number of points. However, no-fault schemes can pay much more attention to distributional concerns in allocating finite resources in a fair and just manner. Many people cannot handle the cost or rigour of tort litigation; and others are entirely unable to pay the money necessary to satisfy a tort judgement against them. The ideas of wellness, health-related quality of life, response to community needs and community justice (rather than individual one-to-one justice) are better exemplified in a modified no-fault system than any other type of scheme.

An important factor in favour of a no-fault scheme as the primary mechanism for assisting people injured in automobile accidents, by comparison with a tort-focussed system, is the matter of value for money. The *relative* level of benefits and costs under the two types of scheme are striking.

The Personal Injury Protection Plan has allowed Saskatchewan residents to pay almost the lowest premiums in Canada for the injury component of their plate insurance, while offering benefits as generous as anywhere else in Canada. The level of benefits provided by any scheme is reflected in their cost, although administration and procedural expenses are also important factors. From a Saskatchewan consumer's point of view, the measure is: *"How much protection from the consequences of an automobile accident is the Saskatchewan person getting for his or her dollar?"*

The Review Committee thus recommends an enhanced role for tort law within the context of the Personal Injury Protection modified no-fault plan. Its recommendations arise because, having satisfied the very practical concern for rehabilitation and restoration of victims to ensure maximum health-related quality of life for victims, other values can then be addressed through the availability of tort actions. In particular the values of deterrence, individual responsibility and loss spreading all have an impact. These values can be respected without unduly affecting the affordability of compensation. Indeed, in some cases, by adding a tort action, the costs to the Auto Fund - and therefore the direct cost to motorists - are reduced, although those costs can be expected to resurface elsewhere in the community as affected organizations increase charges to consumers in order to finance tort settlements.

Balancing values

The Committee considered that the decision to establish a modified no-fault scheme in Saskatchewan involved a balancing of values in the public interest, and that the kind of balance which had been struck through the Personal Injury Protection Plan was justified. For example, the limitation on tort actions to claims for economic loss was offset by the provision of enhanced no-fault benefits, a focus on rehabilitation, and expedition in payment. In the Committee's view, the people of Saskatchewan gained better coverage for the effects of automobile injury in almost all circumstances, while stabilizing rates for their automobile insurance.

The new scheme resulted in a reallocation of funds to provide greater and more immediate support for rehabilitation. The most significant entitlement change under the modified no-fault system was for non-permanent intangible loss. While the Personal Injury Protection Plan provides extensive coverage for rehabilitation and expenses for injured persons, it does not provide benefits for intangible loss unless there is permanent injury. The Committee recognized the view that this was a "trade-off" in the sense of giving up one thing to gain another. The Committee also recognized that the perceived "trade-off" was a fair balance of sometimes competing values.

On an examination of the underlying values of the Personal Injury Protection Plan and of tort law, and how they should be balanced, the Review Committee concluded that the overall Plan should extend the role of tort law in a number of areas. These are as follows:

- The tort action available for economic loss should be extended to cover all economic loss in excess of benefits provided by the Plan, currently provided for in Section 103. The most significant limit in this respect is with respect to loss of earnings, which are restricted to losses above the maximum insurable earnings. As well, the Committee was of the view that a tort action should be available in Small Claims Court, rather than being restricted to the Court of Queen's Bench.
- A tort action for full common law damages should be available against institutional third parties (i.e., parties other than the driver or owner) whose negligence caused the accident.
- A tort action should be available against persons who use a vehicle to deliberately harm another.
- A tort action should be available when a person is injured by a driver who is subsequently convicted of impaired driving in relation to the accident, and who had been previously convicted of impaired driving within a five year period prior to the accident.

Each of these recommendations has a slightly different rationale that will be explained later in this report. As noted previously, individual and institutional responsibility, deterrence and loss spreading are part of the values underpinning for some of these recommendations.

The Committee felt this expanded role of tort would enhance the role of individual or institutional *responsibility* in some cases. Tort law is also a useful *loss-spreading* mechanism, as the cost of rehabilitation and compensation is distributed among those responsible. In addition, tort law, when applied to institutions rather than individuals, may play an important role in *deterrence* of negligent conduct and thus in preventing accidents in the first place.

Overall, the Review Committee felt that the particular blend of no-fault benefits and access to tort law actions recommended in this report appeared to be a more holistic and *harmonious* approach to helping individuals injured in automobile accidents than any single-focused system, whether it was pure tort law or a pure no-fault scheme.

The Personal Injury Protection Plan

Benefits

The no-fault benefits under the Plan are available whether or not there is a person who was at fault who can be sued and whether or not the injured person was at fault (with some limited exceptions). These benefits are extensive, and include:

Rehabilitation and Medical Expenses to a maximum of $541,824, including personal and home care expenses to a maximum of $596 per week and child care expenses up to $433 per week.

Income Replacement Benefits of 90% of net annual income, up to the maximum gross insurable earnings of $56,855 and paid for life, if necessary.

Death Benefits of 50% of the deceased's income replacement amount along with benefits for children and up to $5,419 for funeral expenses.

Permanent Impairment Benefits covering intangible loss as a result of permanent injuries, up to a maximum of $135,456 for catastrophic injuries.

Damages in a tort action

The tort action that supplements these benefits is provided for by Part VIII, Section 103 of **The Automobile Accident Insurance Act**. A tort action is only available if another person was at fault in causing the injuries, and the injured person can prove this. An action is still available if the injured person was partially at fault, but the compensation will then be reduced. In a normal tort action in Saskatchewan, both economic and non-economic losses can be included as damages.

Economic losses cover four major areas:

1. *Special Damages* (no financial limit): all reasonable pre-trial expenses;
2. *Future Cost of Care and Other Expenses* (no financial limit): the cost of care; and reasonable expenses in relation to home care;
3. *Past and Future Loss of Working Capacity* (no financial limit): pre-trial loss of income; future loss of income; and future loss of homemaking capacity; and,
4. *Fatal Accident Damages* (through legislation): loss of dependency on the deceased's income; loss of dependency on the deceased's services; and funeral expenses

In normal tort actions (for non-fatal injuries) non-economic loss is also covered. This includes pain and suffering, loss of amenities of life, and loss of expectation of life. However, the tort action available under Section 103 does not include non-economic losses.

The tort action under Section 103 has other restrictions in comparison with a common law tort action:

- The amount of damages available is slightly smaller because they are for "net" not "gross" income;
- More deductions are involved in the calculation, such as money received by the injured person from private insurance; and,

- The basic insurance coverage (i.e., from the compulsory plate insurance) is $200,000. Losses above that would have to be recovered from at-fault drivers and owners personally, with some exceptions. The Committee understands approximately 50% of Saskatchewan drivers purchase extension insurance to increase their third party liability to $1 million or $2 million (the most common amounts). Also, if the at-fault driver was working at the time and was driving in the course of employment, his or her employer will be vicariously liable for the damages. However, losses funded in these ways are not paid for out of the plate insurance.

Currently, a full tort action, unrestricted by the provisions of Section 103 and including non-economic loss, might be available if the cause of an accident occurs in another jurisdiction and the law of that other jurisdiction applies. In such cases, the action will have to be brought in that jurisdiction, not in Saskatchewan.

A full tort action may also be available in other very limited circumstances where the law is not clear.

The Personal Injury Protection Plan Compared to the Pre-1995 Tort "Add-On" Plan

The Committee considered a comparison of the current Personal Injury Protection Plan to a tort scheme that has an "add-on" plan such as the one in place in Saskatchewan prior to 1995. The Committee looked at the comparison from two related standpoints:

- The benefits and claims available under the two schemes; and,
- The cost of the two schemes.

For a comparison to be real, one of these two must stand as a constant so that the other is thrown into relative contrast. Looked at either way, the Personal Injury Protection Plan with its limited availability of tort actions stands by far as more advantageous to the Saskatchewan public than the pre-1995 modified tort scheme.

In making these comparisons, the Committee considered comparative information, including that provided to the Committee by SGI and a report commissioned by the Joint Committee of the Law Society of Saskatchewan and the Canadian Bar Association Saskatchewan Branch. The Review Committee invited the Joint Committee to meet in order to discuss the report, but the Joint Committee declined.

Benefits of Personal Injury Protection Plan compared to the Pre-1995 Plan

In a straight comparison of benefits-for-money-paid, the current Personal Injury Protection Plan (PIPP) can be compared with the benefits and compensation which would have been available had the "modified tort scheme" continued in Saskatchewan after 1994.

Medical costs: Under PIPP, medical costs are covered to a current maximum of $541,824 for each injured person. Under the pre-1995 "modified tort scheme" the maximum coverage was $200,000 *for all losses* and available only to those who had a tort action; other injured persons were limited to $10,000 worth of no-fault benefits. Under both systems, an unrestricted tort action against third parties is/was available for medical costs in excess of benefits. *The coverage under the Personal Injury Protection Plan is much more extensive in every aspect of medical costs, including those where a tort action might have been available.*

Income Loss: Under PIPP there is full coverage based on a maximum insurable earnings of $56,855 per year (approx. $700 per week net) - *for life* in serious cases. The PIPP residual tort action is limited to losses in excess of $56,855. Under the pre-1995 tort scheme the no-fault benefits were to a maximum of only $150 per week for two years, with, again, a tort action for some injured people but limited by the $200,000 overall coverage. *The coverage under the Personal Injury Protection Plan is much more extensive in many if not most cases. It will clearly be more generous if the "gap" in Section 103 of the Act is closed, as recommended by the Review Committee.* (With respect to most losses, the tort action is for the difference between the no-fault benefits under the Personal Injury Protection Plan and the actual loss the person has sustained as assessed in a tort action. However, for income loss, the action is only for any amount above the level of $56,855, the current maximum insurable earnings. This leaves a gap, because a person's real loss may fall somewhere between the amount of the benefit and maximum insurable earnings.)

"Homemaking" or "Caregiving" Loss: Under PIPP there is coverage based on the number of persons the injured person cared for without remuneration who are under 16 or regularly unable to hold any employment, to a maximum of $433 per week *for as long as the caregiving role continues.* Under the pre-1995 scheme the no-fault benefits were to a maximum of only $150 per week for two years. Under both systems an unrestricted tort action against third parties is/was available for loss of homemaking capacity in excess of benefits. *The coverage under the Personal Injury Protection Plan is much more extensive in all cases, including those where a tort action might be available.*

Intangible loss: Under PIPP the only benefits available for intangible loss are for permanent impairment. The maximum is $135,456 for catastrophic injuries. This includes an unspecified component for "pain and suffering". Under the pre-1995 tort system the maximum no-fault impairment benefit was $10,000 even for catastrophic injuries. However, there was a tort action for all intangible losses, whether minor or very serious. The maximum available at common law under any tort action is now $270,000. The $200,000 of compulsory third party liability insurance for all heads of damage would include this claim. As a result, a large sum was not recoverable unless there were resources available over and above the vehicle plate insurance. However, a pre-1995 tort action against third parties, unavailable under the Personal Injury Protection Plan, would have been for full common law damages including intangible loss. As well, a large number of tort actions were for amounts well within the insurance limits. *Thus for minor and intermediate intangible loss, including "pain and suffering", the pre-1995 tort scheme was more generous, but only for those who could find a driver or third party at fault, and only within the limits of defendant resources. This would also be subject in almost all cases to a deduction for the substantial costs of bringing an action.*

Fatal Accidents: Under PIPP there is a no-fault benefit of 50% of the deceased's income plus 5% for each dependent child, as well as a $32,509 allowance for education and training of dependent spouses and a $5,419 funeral expense allowance. Under the pre-1995 modified tort scheme there was a benefit of $10,000 for a spouse of primary dependant and $1,500 per dependant child. Under both the PIPP scheme and the pre-1995 scheme, the dependants have or would have had a tort action for their full economic losses, but only in cases where some person other than the deceased could be found at fault.

The coverage under the Personal Injury Protection Plan is much more extensive in almost all cases, including those where a tort action might be available. Indeed, in many cases the amount available to dependants may far exceed what might be recovered in any tort action because of off-setting deductions, such as for the inheritance of an estate.

For a comparison of the benefits under the current Personal Injury Protection Plan, the pre-1995 system, and those recommended by the Joint Committee, please see Appendix E.

Costs of the Personal Injury Protection Plan compared to the pre-1995 Plan

Despite the significantly poorer coverage provided by the pre-1995 tort scheme, the costs of that scheme, if continued after 1995, would have by far exceeded that of the Personal Injury Protection Plan. This is conceded by the Joint Committee, which has argued for a return to the old system with some increased benefits.

SGI's independent actuary estimates that if the pre-1995 system had continued, the cost for the five years 1995 to 2000 would have increased by $521 million. This would represent an annual average increase of $144 in an individual's plate insurance.

Implications

Legislation and Regulations

Legislative and regulatory change will be required in order to implement this recommendation.

Cost

The financial implication of this recommendation is a cumulative estimated cost of $5.5 million annually to implement all of the changes proposed by the Review Committee.

Tort Actions for Economic Loss

Recommendations

That a tort action for economic loss in excess of benefits be retained.

That the tort action for economic loss be extended to cover all economic loss in excess of the benefits.

That pre-judgement interest be awarded on tort damages for economic loss in the amount recoverable at common law.

That the requirement of proof for future losses be on the basis of "simple probability" as at common law, rather than on "a balance of probabilities".

That the tort action under Section 103 be available in Small Claims Court as well as in the Court of Queen's Bench.

Current Situation

The Personal Injury Protection Plan allows a person to supplement no-fault benefits with an action in tort for economic loss. Section 103(2) states:

> *"... a victim or dependent may bring an action for damages in the Court of Queen's Bench to recover any of the victim's or dependant's economic losses."*

The action can be against a driver who was at fault or any other person or institution that was at fault in causing the accident. It might also be against someone whose negligence made the injuries worse following the accident. The fact that the action must be brought in the Court of Queen's Bench means that it is available in practice only if the losses claimed are significant, which usually means that they must be for at least $30,000.

If the action is against an at-fault driver of a motor vehicle, the driver will normally be insured for at least $200,000 under Saskatchewan's compulsory plate insurance. The owner of the vehicle is automatically liable for the fault of the driver, and is similarly insured.

Section 103 also allows actions against third parties. The action can be brought against any third party that contributed to the accident. It might therefore be available against passengers in a vehicle (e.g., for rowdy behaviour); cyclists and pedestrians (e.g., for careless cycling or jay-walking); or against parents or other persons who negligently allowed children to cause an accident. The Section also allows for a tort action against a health care provider or institution that treats and exacerbates an injury, or against anyone else whose negligence exacerbates the injuries suffered in the accident.

Section 103(1) explains the meaning of economic loss for the purposes of this tort action, as follows:

a) In the case of a victim who is entitled to an income replacement benefit, any actual income loss suffered by the victim in excess of the maximum yearly insurable earnings.... [currently $56,855];

b) In the case of a victim who dies as a result of an accident, any actual income loss suffered by the victim's dependants in excess of the benefits provided ...;

c) In the case of a victim who is entitled to any benefit [for rehabilitation, expenses or caregiving losses], any actual and reasonable loss suffered by the victim in excess of the benefits to which the victim is entitled; and,

d) In the case of a person who is a worker [under the *Workers Compensation Act*] ... any actual income in excess of the maximum yearly insurable earnings [under the *Act]*; any actual and reasonable loss suffered by the victim's dependants in excess of the benefits provided [under the *Act*] ...; [and] any actual and reasonable loss suffered by the victim in excess of the benefits [under the *Act*]."

The result of these provisions is, in most cases, to allow the injured person a tort action for any economic losses incurred beyond the losses covered by the Personal Injury Protection Plan or the Workers' Compensation legislation. The amount of the no-fault benefits is deducted from the overall loss so that an injured person does not recover twice, but recovers the additional loss over and above what is provided on a no-fault basis.

The provision of the tort action in Section 103 is also limited by comparison with a common law action in a number of other respects. These include:

- Restriction of the claim to net earnings loss rather than gross earnings – Section 103(3)(c)(i);
- Deduction of EI and CPP premiums and deduction of collateral benefits, i.e. benefits received by the injured person from other sources, such as from private accident insurance – Section 103(3)(c)(i);
- No recovery for the first seven days after the accident – Section 103(3)(c)(ii); and,
- No pre-judgement interest on the award Section 103(3)(f).

Commentary

The initial issue considered by the Committee was whether or not there should be a retention of the right to sue in tort for economic loss at all. Having concluded that this question should be answered in the affirmative, the Committee considered subsidiary issues which would enhance the right to sue and make it more available to injured persons.

The most important sub-issue was with respect to the tort claim for loss of earnings. With respect to this loss, the tort action is only available for loss in excess of the maximum insurable income ($56,855 annual gross income). This leaves a gap in the recovery of lost income, because if the injured person was not entitled to an income replacement benefit which reflects actual income loss, he or she may suffer a substantial loss between what was covered by the no-fault income replacement benefit and $56,855 per year.

The important issue was therefore whether or not *all* income loss in excess of the benefits should be recoverable, rather than merely losses in excess of the maximum insurable earnings ($56,855). In other words, the issue was whether or not the "gap" should be filled.

The Committee then considered a number of other issues, the most significant of which were the following:

- Whether or not a tort action should be available for small claims, including those for loss of income during the first 7 days following the accident;
- Whether or not the provision for calculation of lost income be on the basis of net income, as is currently the case under Section 103, rather than gross income, as is the case for common law tort actions in Canada;

- Whether or not there should continue to be a deduction from the damages of any collateral benefits received by the person, such as insurance moneys or disability pensions;
- Whether or not it is appropriate to deny the injured person pre-judgement interest;
- Whether or not the standard of proof for future losses should be clarified to accord with the standard used in other tort cases;
- Whether or not, in imposing a $200,000 limit on liability insurance, the amount of the benefits payable under Part VIII should be factored into the calculation, as is done through Section 42(2.2) of the Automobile Accident Insurance Act; and,
- Whether or not the limit of the basic SGI liability insurance under Section 42(2.1) should be raised to $300,000 per accident from the present limit of $200,000.

Retention of the tort action for economic loss

The provision for a tort action for economic loss in Section 103 is one of the theoretical cornerstones of the Personal Injury Protection Plan. The issue goes to the very core of the Saskatchewan scheme and, for the most part defines it as a "modified" no-fault plan, rather than a "pure" no-fault plan. Indeed, since the Committee decided to recommend continuation of a modified no-fault scheme in its first and central recommendation, it followed that some access to tort law was being suggested.

The Review Committee thought that the tort action for economic loss was a very important part of the Personal Injury Protection Plan when the scheme was viewed as a whole. It was also of the view that a tort action *for economic loss* is a much more desirable modification of a no-fault scheme than other options. An option that has proved very unsuccessful in Ontario is to allow a tort action *for intangible loss* (i.e., non-economic loss) above a certain threshold, but not for economic loss. The Committee rejected this option as too expensive, too uncertain in its limits, and much too impracticable.

Experience in the first five years of the Personal Injury Protection Plan indicates that the tort action under Section 103 was very rarely used. The reasons for this are unclear, although the Committee considered they might involve one or more of the following:

- The no-fault economic benefits for rehabilitation expenses under the Personal Injury Protection Plan are sufficiently generous that very little economic loss remains to be claimed in a tort action;
- The above mentioned gap, between the level of no-fault income replacement benefits and the loss of earnings which can be claimed in a Section 103 tort action precluded most claims for loss of earnings;
- The $200,000 limit of SGI's liability under the plate insurance for any one accident has prevented any larger tort actions, because the $200,000 will usually have been used up by the payment of vehicle claims and no-fault benefits;
- Not allowing a tort action for income loss during the first seven days precluded many small claims for that loss; and,
- The requirement that the action be brought in the Court of Queen's Bench in practice precluded small claims for any type of economic loss.

On the other hand, the Committee learned that SGI has sometimes automatically paid out damages for loss of income under Section 103. This occurred where there was a short-term loss by a high income earner, and SGI knew that, had a tort action been brought, the injured person would be successful and be entitled to the loss. Nevertheless, in the vast majority of cases, the Section does not come into operation for one reason or another.

The Committee would not have recommended a continuance of a "modified" no-fault plan unless the legislative provision for a tort action had meaningful substantive content.

Values underlying the tort action for economic loss

The values the Review Committee considered in making this recommendation have already been examined in this report. The values involve the notions of *individual responsibility* (as well as institutional responsibility); *deterrence; loss spreading;* and *affordability.* The Committee also felt that by allowing tort actions in some cases as a supplement to no-fault benefits the solution would be more holistic and, indeed, that it might produce some *harmony* among those involved and within the community as a whole.

While no-fault benefits provide immediate and long-term assistance to people injured in automobile accidents, a tort action can be an outlet for emotions surrounding the circumstances of the accident and can express the community's disapproval of conduct causing harm. As well, it can serve to spread losses among the wider population to ensure that no one is unjustly enriched through negligent behaviour.

The Committee was therefore of the view that there should be a realistic opportunity for individuals to sue in tort damages for excess economic loss.

Extension of economic loss to cover all earnings loss

The Committee was of the view that the tort action under Section 103 should cover all loss of earnings in excess of no-fault benefits (except with respect to the first seven days, considered below), removing the current restriction which limits the claim to earnings above $56,855.

This issue was recognized by SGI, which itself proposed an amendment to give the Section more expansive operation. SGI was of the view that the current provision in Section 103(1)(a) leaves a gap that should remedied in favour of injured persons. Currently, if the Personal Injury Protection Plan benefits are assessed at a figure below actual income losses, the injured person cannot sue for the extra income loss unless his or her gross income would have been in excess of $56,855 (the current calculation of maximum insurable earnings for the year 2000). The effect of this is to restrict the number of claims for loss of earnings, since according to 1997 Statistics Canada figures, only 8.6% of individuals in Saskatchewan earn more than $50,000 per year.

The effect of this limitation can be illustrated as follows:

- An injured person might have been in the early stages of a career or business with very good prospects of advancement or success, earning at the time of the accident $20,000 per year. However, the evidence might suggest that she or he would subsequently have had a higher paying job or a substantial business income (e.g. $45,000). The Personal Injury Protection Plan Income Replacement Benefit would be calculated at the level of income at the time of the accident, or at the Industrial Average Wage (currently about $28,000), depending on the circumstances. The present tort action does not allow the person to cover losses representing the difference between $20,000 per year and $45,000 per year (or between $28,000 per year and $45,000 per year, if the Industrial Average Wage is used for the benefit).
- An injured person might be a homemaker who was not working outside the home at the time of the accident but intended to return to employment in the near future. Such a person's Personal Injury Protection Plan benefits are currently assessed on the basis of unpaid employment at the time of the accident. Although if this person's main occupation was taking care of others who are under 16 or regularly unable to hold any employment at the time of the accident, he or she receives a benefit for loss of the ability to take care of these persons. These benefits will be adjusted or terminated as the number of persons cared for changes but the injured person is assessed at a level that may be well below what could be claimed in a tort action.
- The injured person might be a youth or a student with high income-earning potential. The income replacement benefit in such a case does not take this future potential into account, and income replacement is assessed at a relatively minimal level.

In all of these cases, a common law tort action, if successful, assesses damages on the basis of the realistic potential for a higher level of earnings. An estimate is made for the entire period of disability, perhaps for the injured person's full working lifespan, as would be the case where a child is permanently and catastrophically injured. The assessment takes into account the realistic probabilities and possibilities of failure and success in the relevant fields of employment, based on the prospects of the injured person given his or her potential ability and prior life-experience, if any.

Section 103 does not permit the injured person to recover damages in tort for this loss unless the income would rise above $56,855. However, with respect to all other types of economic loss, the tort action is for *any* proved loss above the level of the benefits to which the injured person is entitled.

There are a number of persuasive reasons for allowing an injured person to sue for all his or her lost income in excess of benefits. They include the following:

- Limiting the tort action for income loss in these cases restricts the opportunity for the not at-fault injured person (or an injured person only partially to blame) to seek restoration of his or her pre-accident position in life.
- The action offers to the injured person access to the courts to make an individualized determination of income loss.
- The action provides protection for the high-income earner to recover losses not available under the Personal Injury Protection Plan.
- The availability of the right of action puts some pressure on SGI to more carefully assess no-fault benefits in difficult cases, such as those concerning farmers and self-employed persons.

- Where homemakers are concerned, the action gives the opportunity for a full and meaningful assessment at common law of their loss of homemaking capacity as well as their loss of employment income for work outside the home. Similarly with respect to youth and students, a tort action will assess the full extent of their loss based on the probabilities and possibilities of their future success in relevant employment situations.

- The unquantifiable deterrent effect of tort actions remains, and those that might be deterred from acting negligently will be aware of the possibility of being sued for damages, whether they are third parties or persons who are carrying only minimum liability insurance.

- The action retains the element of personal responsibility and logical consequences. Although members of the motoring public collectively absorb the cost of basic income protection for injured persons, if a tort action is allowed against at-fault persons or institutions, they are required to accept some of the consequences of their negligence.

- Where third parties are involved, they are often in a position to absorb or spread the loss (See below, *Tort Actions Against Third Parties*).

The Review Committee therefore recommends strongly that the "gap" with respect to the recovery of loss of earnings under Section 103 be closed, and that as a result the tort action be available against at-fault parties for all income loss in excess of the no-fault income replacement benefit.

Once these larger issues were resolved, the Committee considered issues related to the specifics of the tort action. These issues included:

- Small claims;
- The 7 day waiting period;
- Benefits calculated on net income;
- Collateral benefits;
- Prejudgement interest;
- Future loss; and,
- $200,000 third party liability coverage.

Small claims

Currently, tort actions under Section 103 are rare for smaller losses, possibly due to factors including the following:

- The tort action is restricted to the Court of Queen's Bench by virtue of Section 103(2); and

- By virtue of Section 103(a)(ii) no tort action is available "for income loss for the first seven days after the accident".

The consequence of the current provision with respect to bringing the action in the Court of Queen's Bench is that, *in reality*, there can be no tort action for moderate but nevertheless quite significant losses. It is simply too expensive and impracticable for a tort litigant to go to the Court of Queen's Bench for a claim which is under about $30,000.

There are a number of situations that could be affected by making the tort action under Section 103 more available for small claims. Many marginal losses are significant to injured persons, but will not be sufficiently large to warrant an action in Queens 's Bench Court. This will likely become immediately apparent with respect to income replacement if the Review Committee's recommendation that the tort action under Section 103 embrace *all* loss above the amount covered by the income replacement benefit plus other economic loss.

At common law, a tort action under a certain specified limit (currently $5,000) can be brought in Small Claims Court. The process of bringing the claim involves almost no expense to the claimant, and the procedures are very simple. Injured persons frequently represent themselves in Small Claims Court. The process is a familiar one in automobile accident cases because it is used to determine disputes about liability for the $700 deductible with respect to vehicle repair. The Review Committee learned that small claims procedures are used in British Columbia for tort actions for personal injury in automobile accident cases. The limit for Small Claims Court is $10,000 there. Minor and doubtful claims are effectively excluded because of the fees for legal representation, unless the injured person decides to argue the case personally.

Despite the fact that to allow tort actions under Section 103 in Small Claims Court may require a costly increase in insurance premiums, permitting them may be justified on a number of grounds. The Committee took into account that in submissions at the public consultation meetings and in other communications it appeared that those injured persons who feel totally innocent in an accident are the ones who appear to harbour the most resentment when they feel no-fault benefits under-compensate them. The lack of legal redress *against the negligent party* is sometimes felt very strongly, so an action in Small Claims Court might help address this situation. .

Finally, it was argued that as a matter of access to justice, the tort action under Section 103 ought to be available to low-income earners and for those claiming smaller expenses as well as for those claiming larger sums.

On the other hand, the Committee considered a number of reasons why allowing tort actions under Section 103 in Small Claims Court might not be justified:

- It may involve too large an increase in premiums. The actual amounts that will be paid out under such claims in individual cases may be relatively small, but there may be a large number of claims.
- It may be involve a significant cost to SGI to administer these claims, including assessing their merit and, where appropriate, contesting them in court.
- Much of the problem can be alleviated if there are meaningful adjustments to the assessment of no-fault benefits as recommended by the Review Committee. Many of the "gaps" in compensation can be filled., and the expense of allowing small claims on an expanded scale might be avoided more directly.
- If the Review Committee's recommendations with respect to appeals procedures for no-fault benefits are accepted, many of the problems of under-compensation can be addressed more directly for *everyone*, not just for those who have a tort action against another driver.

On balance, however, the Review Committee saw value in permitting tort actions for economic loss under Section 103 in Small Claims Court as well as in the Court of Queen's Bench.

Income loss during the first seven days

One of the most difficult issues raised with respect to the income replacement benefit was the question of compensation for the first seven days following the accident. The issue arises also with respect to the tort action under Section 103. A possible option is to allow claims only where the accident was the fault of another driver – in essence, to allow a tort action against the at-fault party.

The question of compensation during the first seven days has been a long-standing issue. SGI gave serious consideration to the rationale for a change, but recommended the current provision remain. The seven-day waiting period is an almost universal limitation on no-fault benefits across Canada, but not necessarily with respect to tort actions.

Many of the reasons for excluding no-fault benefits for the first 7 days apply equally to a tort action:

- Exclusion of the first 7 days suggests that individuals should plan their lives such that they are able to absorb the loss themselves;
- The exclusion provides an incentive for employers and employees to negotiate sick leave and salary continuation plans to cover short-term absences from work;
- Nuisance claims are avoided; and,
- Assessment of income loss is more difficult and expensive than it is for vehicle damage. Proof of loss can be more complex and controversial.

In many cases the tort action will not in fact be available because damages under Section 103 involve the deduction of "collateral benefits", and many injured persons will indeed have sick leave entitlements or salary continuation plans to cover short-term income losses.

The Committee concluded that the current provisions should remain, and that losses for the first seven days after the accident should not be recoverable through a tort action.

Calculation based on "net income"

The issue here is whether there should be a change in the provision in Section 103 (3)(c)(i) which requires that in determining economic loss the award must be calculated "based on the injured person's actual income loss after deducting any applicable taxes".

The Review Committee agreed that the award of only net loss of income seemed wholly justified as long as there is an appropriate "gross-up" to account for the any tax of interest generated by the lump sum. Canada is the only major common law jurisdiction in the Commonwealth which assesses damages in a common law tort action on the basis of gross income. Calculation of damages in that way may lead to substantial over-compensation, particularly with respect to short-term losses. Nevertheless, the Committee noted that the original decision of the Supreme Court of Canada in *R. v. Jennings* (1966) implementing this rule was confirmed in *Cunningham v. Wheeler* (1994).

The lump sum awarded in a tort action is not itself taxable, although any interest generated by investment of the lump sum is. This can be effectively dealt with by a "gross-up", which is an additional amount to account for the tax that will be levied on the interest generated by the lump sum. As long as that is done under Section 103, then income loss is more fairly calculated on a net income basis.

Collateral benefits

The issue of collateral benefits is dealt with in Section 103(3)(d) and (e) as follows:

> *"(d) subject to clause (e), in determining a injured person's or dependent's ... economic loss, the Court of Queen's Bench shall deduct from any award all amounts the injured person or dependent has received or is entitled to receive from any government or agency of government, from any public or private insurance scheme or from any other scheme that lessens the economic loss.*
>
> *(e) in determining economic loss ..., the Court of Queen's Bench shall not deduct from any award any amounts the injured person's dependents have received or are entitled to receive from a contract of life insurance...."*

This issue is known at common law as the "collateral benefits" issue or the "collateral source rule". Legal opinion is divided as to whether injured persons should be able to cumulate their compensation from a tort action with moneys received from other sources. However, it is standard to allow dependants of persons killed to keep life insurance as well as tort damages, even if both moneys are essentially designed to provide income protection.

In non-fatal cases, almost all jurisdictions have unsuccessfully struggled with the issue. The Supreme Court of Canada considered it twice in the 1990s. In the first case, *Ratych v. Bloomer* (1990), the Court, by a 5-4 majority, disallowed double recovery of a police disability pension and tort damages. In the second, *Cunningham v. Wheeler* (1994), the Court, by a 4-3 majority, allowed a plaintiff to receive damages as well as disability benefits. Although the cases were distinguishable, in reality the Court appears to have backed off its 1990 position.

On one side of the argument is the concern that the public is funding a loss twice over because it is contributing to both liability insurance and the cost of disability benefits. On the other side is the argument that if individuals have paid for extra insurance out of their own pockets they should be able to benefit from this foresight. A third solution is to have the insurance company reimbursed from the damages award by the amount of the benefits paid, thus reducing insurance premiums to the appropriate level.

The Review Committee felt that through Section 103(3)(d) and (e) of the Act, the Saskatchewan Legislative Assembly had addressed this matter and made an appropriate choice, and the Committee therefore recommended no change.

The award of prejudgement interest

The Committee could see no valid reason why Section 103(3)(f) precluded recovery of pre-judgement interest. An argument was made that if interest rates are high to award pre-judgement interest might lead injured persons to delay settlement of their claims. However, if interest rates are high, then the effect will have been felt by the injured person-plaintiff as well. He or she may have had to borrow money to satisfy unpaid expenses and income losses, and may be waiting to pay off a loan with the damages.

To refuse pre-judgement interest under-compensates the plaintiff. Furthermore, it potentially provides an incentive for insurance companies to delay settlement.

The award of damages with respect to future losses, as well as settlement calculations for those damages, are carefully computed and discounted to present value. They relate to expenses and losses that have not yet been sustained by the injured person, and therefore do not carry pre-judgement interest.

Clarification of proof of future loss

Section 103(3)(a) provides that "economic losses must be proven on a balance of probabilities." This might be construed to mean that the injured person must prove that the losses will be suffered "more likely than not". However, this standard of proof is not used for future losses in normal tort cases at common law. Instead, future losses are assessed on the basis of "simple probability".

As stated by the Supreme Court of Canada in *Athey v. Leonati* (1996), "they are given weight according to their relative likelihood." The losses claimed are assessed on the basis of the percentage likelihood that they will occur in the future. Similarly, the level of income which it is claimed that the injured person would have received had she or he not been injured is multiplied by the percentage chance that it would have been earned, whether the probability is more or less than even.

Section 103 should be altered to refer to "the normal standard of proof used in a civil action" in order to clarify this point.

The $200,000 basic third party liability coverage

The greatest restriction of the tort action under Section 103 could be viewed as the limit on the compulsory liability insurance carried by drivers and owners. The current limit is $200,000 for any one accident, as provided for by Section 42(2.2) of **The Automobile Accident Insurance Act.** This limit is now standard for all Canadian provinces.

In Saskatchewan this limit is not as significant as it is in those provinces where the only redress for injured persons is through a tort action. This is because the value of no-fault benefits under the Personal Injury Plan can far exceed $200,000. However, the limit remains a potential barrier to recovery under Section 103 in any serious accident where an injured person is seeking compensation beyond the no-fault benefits. The Committee noted that the $200,000 is a limit *per accident*, and that the average number of persons injured in an accident is 1.8. Furthermore, the limit is reduced by the value of no-fault benefits paid out by SGI. As a result, in any case of serious long-term injury, the economic losses of any one injured person are unlikely to be adequately covered by the basic tort liability insurance.

Not all cases will involve a limit of $200,000. Drivers or owners may have purchased extension insurance to protect against the use of their own assets to satisfy a tort judgement against them. The most common amount of third party liability purchased through extension plans is $1 million and $2 million.

Additional resources may also be available in situations involving a tort action under Section 103 against third parties other than the driver or owner of a vehicle.

The Committee considered three alternatives with respect to this issue:

- Make an additional $100,000 available for the satisfaction of tort actions under Section 103;
- By an amendment to Section 42(2.2), make $200,000 available for the satisfaction of tort actions, but without deducting the value of Personal Injury Protection Plan benefits from the $200,000; or,
- Increase the compulsory insurance coverage to $300,000.

It may be argued that the $200,000 limit on compulsory liability insurance is too low and should be raised to $300,000. On the other hand, in the United States, despite the large size of tort awards, many jurisdictions require drivers to carry only minimum liability insurance in the region of $20,000 or $30,000.

Given these considerations, the Review Committee concluded that:

- The primary focus of the basic insurance purchased with Saskatchewan licence plates, and of SGI, should be on improvement of the no-fault benefits under Personal Injury Protection Plan. These are benefits to which everyone is entitled. The Committee was of the view that money is far better spent on ensuring that those benefits are adequate and effective.
- If larger amounts are available in tort actions, too much money would be absorbed in the litigation process and would thus never reach injured people.
- If SGI has already paid out, or will pay out, accident benefits totalling $200,000 to everyone injured in a particular accident, it should be considered to have satisfied its obligations to the public under a compulsory insurance system.
- The matter of third party liability insurance falls more squarely under Part IV of **The Automobile Accident Insurance Act** than under Part VIII, which is the Part the Committee is mandated to review.

The Committee also recognized that the $200,000 compulsory insurance limitation (or a lesser limit) has always applied to tort actions against the driver or owner of an automobile in Saskatchewan. It has never been higher than that in any province in Canada. It has therefore always been a barrier to the recovery of damages in tort.

Even those who would argue for a return to tort law as the primary mechanism for assistance for persons injured in motor vehicle accidents have not suggested a change in the compulsory third party liability insurance level. This may be because the cost of providing a more effective tort action for serious accidents is high, at least by comparison with no-fault benefits. The Personal Injury Protection Plan already covers rehabilitation costs to the extent of $541,824 for *each injured person separately*, irrespective of whether they are able to find another driver at fault.

Finally, it should be noted that the best protection with respect to tort claims for those who use the highways is self-protection. This is achieved by the purchase of insurance for themselves and their families on a "first party" basis in advance, as part of a "family security" extension policy offered by SGI and other insurance companies. The coverage is for the very circumstance in issue: where the party at fault cannot satisfy a judgement. This solution is available for those who consider that the $200,000 third party liability coverage is inadequate.

Implications

Legislation and Regulations

Legislative change is required in order to implement this recommendation.

Cost

SGI's actuary has estimated that implementing this recommendation will result in increased costs of $941,000 annually. The assessment of tort damages for excess economic loss under Section 103 includes the limitations specified in the Section. It also normally includes a deduction for contingencies, usually about 10%. The Review Committee assumed that the contingency deduction would average 10% in the costing of this recommendation.

Tort Action Against Third Parties

Recommendations

That a tort action for all losses be available against institutional third parties whose negligence was proximately related to the accident.

That a tort action for all losses be available against health professionals and institutions when, as a result of their negligence the injured person's injuries are made worse.

It was the Committee's view that despite the overall emphasis of the Personal Injury Protection Plan on no-fault benefits and economic loss, a tort action should be available against institutional third parties for the full amount of damages awarded at common law, including damages for pain and suffering and other intangible loss.

Current Situation

The Automobile Accident Insurance Act precludes tort actions against anyone unless the action falls within the parameters of Section 103. The blanket restriction is provided for in Section 102:

(a) no person has a right of action respecting, arising out of or stemming from bodily injuries caused by an automobile arising out of an accident...

(b) no action or proceeding lies or may be instituted in any court respecting, arising out of or stemming from bodily injuries caused by an automobile arising out of an accident...

(c) the right to benefits stands in lieu of all rights of action to which a person is or may be entitled to ....

Subsection (a) precludes actions where the law of Saskatchewan applies (e.g. for all negligent conduct which occurred within the province); while subsection (b) additionally precludes an injured person from suing in Saskatchewan even though the law of another jurisdiction applies to the tort. The injured person may be able to sue for damages in the foreign jurisdiction, but cannot do so in Saskatchewan.

Nevertheless, third parties are not completely immune as the injured person can sue third parties for economic loss under Section 103.

Commentary

Many of the values the Committee identified as important in formulating recommendations related to the Personal Injury Protection Plan are common to a no-fault plan: community responsibility, rehabilitation, and equity and equality. Affordability and practicality were also viewed as important. As indicated in its primary recommendation, the Committee believes that these values should continue to dominate a plan designed to help those injured in motor vehicle accidents in Saskatchewan.

The Committee nevertheless paid attention to the importance of other values such as individual responsibility, deterrence and loss spreading so that the system as a whole is balanced. These are some of the values that underpin tort actions, and the issue of whether a tort action should be available against third parties therefore involved consideration of how the system as a whole should be balanced. The Committee gave careful consideration to the difficulty of reconciling the different values involved. The Committee ultimately concluded that the arguments in favour of a full tort action against institutional third parties outbalanced those that would have excluded them.

It should be noted that if Section 103 remains in place, the availability of a tort action against third parties assumes greater importance. However, if Section 103 is broadened to cover all income loss in excess of benefits and the gap in income replacement is filled, a separate provision for third party actions has a practical effect mostly with respect to intangible loss, including recovery for pain and suffering.

Alternatives the Committee considered included:

1. To permit a tort action for all losses against all third parties (i.e., anyone who is not the driver or owner of the vehicle) whose negligence contributed to the injuries.
2. To permit a tort action for all losses against institutional third parties (e.g., businesses and public authorities) whose negligence caused the accident, but not against individuals closely connected to the accident,
3. To permit an action only against out-of-province third parties. This option was based partly on the fact that out-of-province parties were not contributing to the funding of the Saskatchewan Personal Injury Protection Plan, and that, as a matter of reciprocity, Saskatchewan people were subject to tort actions in other jurisdictions.
4. To disallow actions against any third parties unless they are for economic loss and therefore fall within Section 103.

The Committee was of the view that the second option responded best to the values that underlie a modified no-fault system. The Committee therefore agreed that a tort action should be available against institutional third parties such as businesses (e.g., automobile repair, establishments that serve alcohol, and road repair contractors) and public authorities (e.g., those agencies responsible for road safety, maintenance and signage). The Committee concluded that a tort action should not generally be available against individuals (e.g., a passenger, bicyclist, or pedestrian).

Despite the clear overall emphasis that the Committee placed on no-fault benefits, it thought that a no-fault system should not eliminate responsibility on corporate and government institutions with respect to road accidents and public safety. The position of institutional third parties is distinguishable from that of individuals, particularly from those individuals involved in the accident. A third party is often physically distant from the particular accident and can be set apart theoretically.

The cost of this more extensive liability must come from somewhere. If this recommendation is implemented, the following implications are possible:

- In the case of businesses, the cost of their products or services may increase;
- In the case of the medical profession, the tax base may be affected, since government normally pays the liability insurance;
- In the case of supervisory government liability, the general tax base may be affected.

The governing questions here are, for the most part:

- Is it worth shifting some of the loss incurred in road accidents to these sectors of the community, or the community in general?
- Is the gain of additional damages for the injured person worth the cost of the tort process?

In answer to these questions, the Committee thought that, on balance, the availability of a tort action by injured persons against institutional third party seemed appropriate for a number of reasons:

- The funding of the Personal Injury Protection Plan comes from individual owners of motor vehicles who are in essence financing the system on behalf of everyday road users and individual members of the public who may be injured in an accident. Institutions should not be able to indirectly gain immunity from tort actions where they have been negligent in causing an accident. They should be liable just as if any other part of their activities (e.g. manufacturing, repairing, serving the public) had caused personal injury to another person.
- In the context of institutions, by contrast with individuals, there is more frequently the opportunity for pre-accident assessment of safety – the opportunity to take measured steps to prevent accidents. Tort law here has a significant role to play in deterrence and prevention of accidents. Third party institutions should be carefully considering public safety in the conduct of their operations. Manufacturers should be under continuous pressure to improve vehicle safety. Bars should be discouraging drinking and driving. A tort action often exposes a previously hidden deficiency in these areas and provides the trigger for improvement.
- A tort action against institutions is a meaningful way in which society can spread the losses associated with motor vehicle accidents.
- For private institutions making profits from auto-related activities (e.g. by the manufacture or repair of vehicles), it could be said that if they are exempted from liability for negligence, they would be "unjustly enriched".
- With respect to the liability of public bodies, such as government agencies, a tort action would reflect the steady move of tort law into the public law arena. As government takes over functions that in the past might have been performed by individuals or private institutions, a tort law responsibility is being increasingly imposed for the negligent performance of those functions. Tort law becomes the guardian of private rights against carelessness in the performance of public obligations.

Where the conduct of a third party takes place out-of-province, such as in the case of the negligence of a Detroit auto-manufacturer, the tort action against the third party arises as a matter of reciprocity. Saskatchewan residents risk being sued when driving in a tort-based jurisdiction, and they thus pay liability insurance as part of their plate coverage to protect themselves from such tort actions against them. It is only natural that the converse be true: that residents of other jurisdictions, if they are negligent while outside Saskatchewan and that negligence causes a motor vehicle accident within the province, should shoulder some of the financial burden.

It should also be noted that, from the point of view of costs to SGI, the Auto Fund actually gains from such third party liability. In addition to the injured person having the right to sue for tort damages, SGI would have the option of joining the action to recover benefits it has paid out to the injured person. If the injured person does not sue, SGI could bring this action separately. Furthermore, if another driver is at fault, SGI can seek contribution from third parties so that cost of any tort action is shared between SGI and the third party.

Post Accident Exacerbation of Injuries

Injuries initially caused in a motor vehicle accident are occasionally made worse because they are not treated carefully. With respect to this – the "post-accident exacerbation" of the injuries – the view of the Committee was that an action in tort should be available against health professionals or institutions that negligently increase the injury and loss. This is a familiar part of the legal fabric.

Overall Effect of Third Party Liability

The Review Committee believed that whatever liability there was in the ordinary law against persons who exacerbated an injury should remain with respect to the aftermath of motor vehicle accidents. The total loss from the accident can then sometimes be spread amongst a broader population base. The Review Committee recognized that this type of liability might apply to those giving treatment under the auspices of the Personal Injury Protection Plan, although Section 211 of the Act provides SGI staff immunity and prevents an action against SGI's directors, officers, employees or agents.

Overall, if the tort right under Section 103 is expanded to include almost all excess economic loss, then the recommendation here should have only marginal financial consequences for the Personal Injury Protection Plan:

- It would give some injured people the right to sue for intangible losses, including pain and suffering.
- Where permanent injury is involved, the injured person will have a right to sue for the difference between his or her the Permanent Impairment Benefit and the amount of damages for "non-pecuniary loss" which would be recoverable in a tort action.
- The restrictions to the assessment of damages for economic loss under Section 103 would not apply. Damages in the action against third parties would, for example, be assessed on a gross income basis, and there would normally be no deduction of "collateral benefits" (e.g. the proceeds of private accident insurance or a disability pension).

Implications

Legislation and Regulations

Legislative change will be required to implement this recommendation.

Cost

There may be a marginal reduction with respect to motor insurance premiums, although the costs of the new liability of third parties might indirectly resurface elsewhere. On the other hand, the deterrent effect of the liability might actually reduce overall costs of accidents and provide a general saving.

Tort Action when a Vehicle is used as a Weapon of Choice

Recommendation

That full Personal Injury Protection Plan benefits be available to any person injured when a vehicle has been used as "a weapon of choice" to harm that person.

That a tort action, including the possibility of "aggravated" and "exemplary" damages, be available for all losses incurred by an injured person where a vehicle has been used deliberately and specifically to harm that person.

That SGI have the discretion to recover benefits paid from any person criminally responsible for deliberately causing injuries.

That a person who is injured in the course of intentionally causing personal injury to another, and who is convicted of a criminal offence in relation to that conduct, be denied both an income replacement benefit and a permanent injury benefit but remain entitled to benefits for rehabilitation and expenses.

That a person who is injured in the course of intentionally causing personal injury to another have no right of action in tort against anyone if the circumstance should occur that an action might otherwise be available.

Current Situation

The Automobile Accident Insurance Act is unclear on the question of an injured person's rights where a vehicle was used as "a weapon of choice". The injured person may have no right to benefits at all or may have no right to sue in tort, depending on how the legislation is interpreted.

The legislation also appears to allow the driver of a vehicle in such a situation to claim full no-fault benefits, if he or she was injured in the incident.

The only provision in the current legislation that directly addresses these issues is Section 105(1). It excludes recovery by "a victim or a dependent of a victim who wilfully caused the accident" or by a "dependent of a victim if the dependent wilfully caused the accident". This covers self-inflicted injury or injury during an attempted suicide. If the injured person is killed by one of his or her dependents, the dependent is excluded from benefits.

In addition to this, the blanket prohibition of tort actions in Section 102 of **The Auto Accident Insurance Act** may prohibit an injured person from suing another person even where that other person used a vehicle "as a weapon of choice". This assumes that Part VIII of the Act applies to such a situation. If it does, then the injured person will be able to claim no-fault benefits, but the exclusion of tort may apply.

On the other hand, insurance law may well not treat the situation as covered by the Act. It can be said that injuries inflicted intentionally do not arise "out of an accident" as required by Section 101. If this interpretation is correct, the injured person *would* be entitled to bring a tort action for his or her losses. But then the injured person would be denied benefits under the Personal Injury Protection Plan because the legislation as a whole does not apply.

The result of either interpretation is not satisfactory. An injured person may be left almost remediless, because persons who have committed crimes of this nature may frequently have no resources to satisfy a tort action, and they may even be in jail by the time the tort action is brought. Furthermore, in many situations the injured person may not want to risk suing an individual who has committed such a crime. This might be particularly so in cases of spousal abuse, where not only the injured person but the injured person's children may be in danger from any contact with the criminal.

Commentary

The Review Committee learned that there were at least four cases in recent years where situations involving these kinds of issues had arisen. Although they are limited in number, they raise important issues of principle. They test the underlying "values" of any compensation or rehabilitation plan, whether it be no-fault or tort-focussed.

The Review Committee considered the present law to be unsatisfactory, not only because of the ambiguity of the legislation but also because the Committee disagreed with the result of some of the potential interpretations. The Committee therefore rejected the option of leaving the situation as it now stands.

The significant alternatives considered by the Committee with respect to the rights of injured persons where a vehicle was used by another person as a "weapon of choice" were as follows:

- Allow the injured person to obtain Personal Injury Protection Plan no-fault benefits and allow the injured person the right to sue the perpetrator, but only to the extent a tort action is available to other injured persons i.e. for the recovery of economic loss in excess of no-fault benefits.
- Allow the injured person benefits from the Plan, and permit the injured person additionally to have the right to sue the perpetrator in tort for full damages, but only after the perpetrator has been convicted in a criminal court for an offence against the person.
- Allow benefits as above, and permit the injured person to sue the perpetrator in tort in any case where the injured person can prove that the vehicle was used as a weapon of choice on the normal civil burden of proof.

No-fault benefits for a person injured as the result of an intentional act

It was the Committee's view that where personal injury is deliberately inflicted on a specific injured person, the injured person should have a right to receive full no-fault benefits just like any other injured person. It would seem anomalous if an injured person were to lose assistance from the Personal Injury Protection Plan because it could be proved that the driver of a vehicle was acting to deliberately hurt the injured person, rather than acting recklessly, grossly negligently, or merely carelessly.

In these latter cases, although the drivers may face serious criminal consequences, this does not affect an innocent injured person's right to benefits. Nor should it do so where the conduct is more heinous. Indeed, such an interpretation somehow suggests fault on the part of a victim of criminal conduct, and it should not be accepted.

In addition, there is sometimes a fine line between gross negligence or recklessness, on the one hand, and deliberate conduct, on the other. If an injured person threw himself or herself across the hood of a car, or otherwise tried to stop the driver of a vehicle from moving away, the driver's conduct in trying to shake the injured person off might in many cases be considered an intentional and deliberate act to cause harm. Injured persons, some of whom might be acting with the very best of motives, perhaps in aid of a third person, should not be denied benefits. And there should be no doubt on the issue left hanging while the facts are ascertained, perhaps in a criminal trial. The universality and comprehensiveness of the Personal Injury Protection Plan seemed to the Committee to require that only in the most exceptional circumstances should benefits be denied to persons injured by an automobile.

Right of the injured person to sue in tort

The Review Committee believed that where a vehicle had been used as a weapon of choice, the injured person should be permitted to sue the perpetrator in tort in addition to receiving benefits. This was because intentional harm was thought to stand on a completely different footing than negligence or even recklessness or drunkenness. The law has always treated intentional conduct as more serious.

In many situations, no remedy is available if the harm was caused negligently, but a remedy exists where harm was inflicted intentionally. If a vehicle is used as a weapon of choice, then the tort of battery has been committed (which, in criminal law is called "assault", and it might be "assault with a deadly weapon"). Such a situation is very different from the normal automobile accident situation. The value of *individual responsibility* and "logical consequences" are both relevant to these circumstances. The fact that such a person might suffer severe penalties under the criminal justice system can be taken into account in a civil action with respect to the award of "exemplary damages". Furthermore, there may be an element of *deterrence* if it is made clear that a person can be sued for damages in this kind of situation.

The Review Committee also discussed whether or not a criminal conviction should be the basis for the action. Despite a failure of the police to prosecute, or despite an acquittal in a criminal case, the perpetrator should be liable in a tort action provided that the normal standard of proof for a civil case is satisfied. This is the same as the position in cases where another type of weapon is used.

The Committee concluded that the action should be for all losses incurred, including:

- Damages for intangible losses such as pain and suffering;
- "Aggravated damages" to compensate for the hurt and resentment over the manner in which the injuries were inflicted; and,
- "Exemplary damages" to punish the perpetrator and to set an example.

In short, the Committee determined that the injured person should have access to all the remedies that would have been available had the perpetrator chosen a different weapon to inflict the injuries.

Right of the perpetrator to no-fault benefits

At the other end of the spectrum is the question of the rights, if any, of a perpetrator where he or she has used a vehicle as a weapon of choice. The alternatives considered with respect to this were as follows:

- Continue with the current position in which there may be a right to benefits for the perpetrator on a no-fault basis, despite the nature of the conduct;
- Disallow no-fault benefits completely; or,
- Disallow any claim for the Permanent Impairment Benefit and for income replacement benefits, but retain the right to rehabilitation and expense benefits.

The Review Committee again recognized the multiple competing values involved in addressing this issue. Presentations to the Committee had put forward opposite extremes:

- Some argued forcefully for the denial of benefits to impaired drivers and their dependents as well as to those involved in intentional criminal acts. They made reference to individual responsibility and emphasized the blame and serious fault of the injured person in his or her actions.
- Other presentations emphasized the notion of universality of benefits. They cited the situation where the injured person was only marginally over the legal limit for alcohol. Even where there was alleged intention to cause harm specifically to another, they suggested that any rigid rule concerning criminal conduct might be arbitrary in application. It might risk denying benefits to an injured person and his or her dependants on a fine point of evidence.

As indicated previously, the Committee was of the view that the use of a vehicle as a weapon of choice was distinguishable from other situations. At common law, the maxim *ex turpi causa non oritur actio* ("an action does not arise from a base cause") was used to bar legal recourse when a person was engaged in socially inimical conduct. Although the Supreme Court of Canada has recently suggested in *Hall v. Hebert* (1993) that the maxim is quite limited, it might still cover the use of a vehicle to deliberately harm another. In any event, it is clearly open to a legislator to deny benefits in this kind of situation.

The Review Committee felt that the perpetrator should remain entitled to benefits relating to his or her injury rehabilitation, but should be denied other benefits. Universality of the principle of no-fault seemed to suggest that health care should be provided whatever the circumstances. However, the Committee was of the view that a compensation system should not provide benefits of any other kind in cases involving deliberate criminal conduct.

The Committee considered that its solution appropriately balanced the different philosophical viewpoints on this issue. Canada provides necessary medical services to its most serious criminal offenders. The situation involving a vehicle might involve a moment where a person with no previous record of violence lost control of his or her judgement. The seriousness of an incident is better assessed by a criminal court, and will be reflected in the sentence imposed.

The Committee believed that benefits should not be withheld unless the perpetrator was convicted of an offence against the person involving the deliberate infliction of harm. This was because of the need for injured persons to get immediate assistance, including both health care and income replacement benefits. SGI should therefore not deny benefits in the immediate aftermath of an accident. And benefits should only be withdrawn if it was proved in a criminal court beyond a reasonable doubt that the crime had been committed. Otherwise, too much evidential uncertainty might affect an injured person's recovery and the welfare of his or her family in the aftermath of the accident. It should be for SGI to recover any Income Replacement or Permanent Impairment Benefits previously paid out if a criminal conviction ensued.

Right of the perpetrator to sue in tort

In the unusual circumstance where a perpetrator might have a tort action against someone, even though he or she was using the vehicle as a weapon of choice, the Committee was of the view that any tort action by the perpetrator should also be barred. If the *ex turpi causa non oritur actio* ("an action does not arise from a base cause") maxim did not bar the action, it should be made clear in the legislation that no such action was available. There are surely some circumstances where persons lose the legal rights and remedies that they might otherwise have. Intentional infliction of personal injury, which might even amount to attempted murder, is surely one of those situations.

Summary

In summary, the Committee concluded that:

- An innocent injured person who is injured by another person who used the vehicle as a weapon should have a right to full benefits under the Personal Injury Protection Plan. It is arbitrary to deny benefits to an injured person because the use of the vehicle was criminal in character. The criminality has nothing to do with the injured person, who is the victim of a crime of violence. As well, there is sometimes a fine line between reckless endangerment and deliberate infliction of harm. Benefits should not be withheld, and there should be no issue of entitlement that depends on the outcome of an evidential dispute with respect to the intent of the driver.
- The injured person should also be allowed to sue the perpetrator in tort in the same manner as if the perpetrator had used a different weapon. The intentional tort of battery ("assault" in criminal law) stood on a different footing than even reckless or negligent driving. The value of individual responsibility, including the notion of "logical consequences" of one's actions, superseded almost all other values in this circumstance.
- The right of action should be for all losses incurred, including intangible loss, "aggravated damages" to compensate for anger and resentment over how the injuries were inflicted, and "exemplary damages". These are the types of damages that would be available in the ordinary law in this type of situation.
- If a person is convicted for a crime involving deliberate harm and is also injured, he or she should be denied both the Permanent Impairment Benefit and any Income Replacement Benefit. However, the Committee considered that the person should retain the right to benefits related to rehabilitation and expenses. It would be inappropriate for SGI to assume intent before the justice system deals with the matter, and a person's injuries should be attended to as quickly as possible to be consistent with the principles of the Personal Injury Protection Plan.

- SGI should be allowed to recover benefits paid from the criminally responsible person.
- In the rare case where there might be a tort action available to the perpetrator, it should be denied by legislation. This reflects the legal maxim *ex turpi causa non oritur actio* ("an action does not arise from a base cause"). This should be so even if the ordinary law might allow an action.

Implications

Legislation and Regulations

Legislative change is required in order to implement this recommendation.

Cost

The Review Committee's actuary estimates the cost of implementing this recommendation would be minimal.

Tort Action and Benefits for Impaired Drivers

Recommendations

That Personal Injury Protection Plan benefits excluding the Permanent Impairment Benefit be provided to a person injured in a motor vehicle accident who is subsequently charged and convicted of a first offence for impaired driving;

That rehabilitation benefits but not income replacement or permanent injury benefits be provided to a person injured in a motor vehicle accident who is subsequently convicted of impaired driving in relation to that accident and who has been convicted of impaired driving or a .08 offence within a five year period previous to the current conviction;

That a tort action be available against the at-fault driver to other persons injured as a result of a motor vehicle accident where the driver is subsequently convicted of impaired driving in relation to that accident and who has been convicted of impaired driving within a five year period previous to the current conviction.

Current Situation

Impaired driving is a factor in a disturbing number of motor vehicle accidents, and imposes a significant cost to the premium-paying vehicle owners of the province. Individuals who have multiple convictions for impaired driving are currently entitled to all Personal Injury Protection Plan benefits except the Permanent Impairment Benefit.

Commentary

The Committee considered this issue of broad public concern as it touches on the Personal Injury Protection Plan because of the provision of benefits on a no-fault basis.

The Committee recognizes that there is a difference between deliberate acts and reckless endangerment. However, the distinction may be quite small in some situations. Multiple convictions for impaired driving could be reasonably viewed as "crossing the line" and providing an indication that an individual has chosen to drink and drive after a conviction. Given such deliberate intent, the person should be accountable for his or her actions.

Accordingly, the Committee recommends:

- *Limited benefits in the case of a first offence for impaired driving:* That Personal Injury Protection Plan benefits excluding the Permanent Impairment Benefit be provided to a person injured in a motor vehicle accident who is subsequently charged and convicted of a first offence for impaired driving;

- ***Significantly limited benefits in the case of a second offence for impaired driving:*** That rehabilitation benefits but not income replacement or permanent injury benefits be provided to a person injured in a motor vehicle accident who is subsequently convicted of impaired driving in relation to that accident and who has been convicted of impaired driving within a five year period previous to the current conviction;
- ***Tort action available in the case of a second offence for impaired driving:*** That an unrestricted tort action be available to other persons injured as a result of a motor vehicle accident where the driver is subsequently convicted of impaired driving in relation to that accident and who has been convicted of impaired driving within a five year period previous to the current conviction.

The Committee also suggests that the potential loss of insurance benefit entitlement with a second conviction be part of the instruction in the compulsory Driving While Impaired course for persons convicted of impaired driving.

Implications

Legislation and Regulations

Legislative change will be required to implement this recommendation.

Cost

The Review Committee's actuary has estimated that implementing the recommendation to deny an income replacement benefit will result in a decrease in costs of $574,472 annually. Although additional awards may be paid out through the tort system, SGI may subrogate against the convicted at-fault drivers, resulting in a total estimated cost increase of $215, 115. Therefore, the net impact of these recommendations will be an estimated cost decrease of $359, 357.

Chapter Three – **Benefits**

In this chapter, we address issues related to the benefits provided for the Personal Injury Protection Plan. The major areas considered are:

- Benefits for rehabilitation and expenses;
- Benefits for intangible loss;
- Income replacement benefits; and,
- Caregiver benefits.

The Review Committee approached the area of benefits under the Personal Injury Protection Plan having in mind the submissions it had received from members of the public, from lawyers and health professionals, and from other organizations and groups who were concerned about the fairness and sufficiency of the no-fault benefits. The Committee also examined the legislation and regulations carefully and methodically.

Our consideration of benefit-related issues was helped by a detailed submission from SGI that put forward a large number of recommendations. Many of these were of an administrative nature or suggested relatively minor adjustments to the detail of the benefits. At the end of this chapter, the Committee indicates those where the Committee generally agreed with SGI, and for which the related costs are included in the overall implications of the Committee's recommendations. Other SGI recommendations are dealt with as part of the following detailed issue discussion related to specific benefits for rehabilitation and expenses, intangible loss, income replacement, and caregiving.

Benefits for Rehabilitation and Expenses

Benefit for Rehabilitation Expenses

Recommendation

That the medical and rehabilitation limit be increased from $541,824 to $5,000,000, with caps on the amount available for weekly personal and home care.

Rehabilitation is the first priority under the Personal Injury Protection Plan. This should cover the lifelong care of those few injured persons who are catastrophically injured. The Review Committee agreed that the maximum rehabilitation benefits available to an injured person should be increased to $5 million.

The Review Committee considered the possible retroactivity of the extension of the limit so that those who were injured in automobile accidents since the implementation of the Plan would be able to benefit from the change. One or two people who were injured post-1995 are already approaching the current limit of $541,824. However, the issue of making benefits retroactive raised wider concerns for all Personal Injury Protection Plan benefits, and the Committee makes no recommendation on this issue.

Current Situation

Each year, some persons injured in motor vehicle crashes are so severely disabled that they may exceed the sum currently available for rehabilitation costs over their lifetimes. These people will then probably have to rely on the general medical care system and other publicly-funded social services for the remainder of their lives. The limit for rehabilitation expenses is provided for in Section 110(3) of **The Automobile Accident Insurance Act**. The current limit is $541,824, which is the present value of the original 1995 limit of $500,000.

The rehabilitation benefit includes the cost of programs, services and treatments that are recommended or advisable to contribute to the rehabilitation of an injured person, in the efforts to lessen the injured person's disability caused by the accident, and to facilitate the victim's recovery from the accident. Included are:

- Physical Therapy
- Acquired brain injury programs and treatment;
- Occupational and vocational training and programs;
- Early Intervention Programs
- Alterations to an injured person's residence; and,
- Modification or purchase of a vehicle for an injured person.

The rehabilitation benefit limit of $541,824 also includes the cost of expenses provided for in Division 7:

- Benefits for personal assistance expenses of up to $550 per week;
- A weekly caregiver benefit to a non-earner or part-time earner for the care of others, based on the number of persons cared for ($300 for one person; $325 for two persons, $350 for three persons, and $400 for four or more persons);

- A weekly caregiver benefit to earners or students for the care of others, based on the number of persons cared for ($75 for one person, $100 for two persons, $125 for three persons, and $150 for four or more persons);
- A family enterprise benefit of up to $550 per week for injured persons working without remuneration in a family enterprise;
- A benefit for expenses related to medical and paramedical care, the purchase of prostheses or orthopaedic devices, and cleaning, repairing or replacing clothing; and,
- A benefit for expenses incurred for a person to accompany the injured person so that he or she can receive medical or paramedical care.

Commentary

In its submission to the Review Committee, SGI recommended an increase in the medical and rehabilitation limit. SGI was of the view that the increase should be to an unlimited amount, with caps on the amount available for personal care and caregiving expenses. SGI presented an actuarial estimate for this improvement as well as the cost of alternatives. The Review Committee considered the following information provided by SGI (actuarial estimates in brackets):

- Increase the medical and rehabilitation limit to an unlimited amount, with caps on weekly personal/home care expenses ($1,453,000);
- Increase the medical and rehabilitation limit to $1 million, with caps on weekly personal/home care expenses ($950,000).
- Increase the medical and rehabilitation limit to $2 million, with caps on weekly personal/home care ($990,000).
- Leave the medical and rehabilitation limit at $541,824.

The three latter alternatives were considered on the basis that the figure would be increased annually because of indexation.

The Committee did not consider reducing the medical and rehabilitation limit.

Rehabilitation for people injured in automobile accidents is at the very core of the Personal Injury Protection Plan. It is a first priority that there should be available funds to dedicate to assisting injured persons to return to normal activities to the greatest extent possible. This priority reflects the value of ***rehabilitation*** that the Review Committee strongly emphasized.

Aside from fatal accident cases, the most tragic cases are those where a injured person is rendered quadriplegic or paraplegic, or severely brain-injured, or a combination. In 1999-2000, twelve people incurred spinal cord injuries (resulting in quadriplegia or paraplegia) in Saskatchewan. Six of these resulted from automobile accidents. These injuries are life-long and in many cases there is almost no reduction in life expectancy. They are situations where private resources will likely always be insufficient to provide even minimum care.

The Review Committee felt that, as a cautionary measure from an actuarial point of view, a limit of $5,000,000 should be placed on the benefit. This assures that, if there were spiralling medical costs and advances in technology, a cost would not be imposed on future generations for the care of someone injured a quarter-century previously. It would also provide a sensible check on the expenditure of money on an on-going basis.

Retroactivity

The Review Committee gave consideration to the possibility of making an increase retroactive so that any person who has received this benefit since 1995 and who continues to need care and rehabilitation services on an on-going basis would not be limited in the amount he or she might receive. The Committee was informed that there were one or two persons injured since 1995 who were approaching the current limit. An example is the young person who has suffered a brain injury and is also a paraplegic from a motor vehicle accident. He or she has significant personal care costs, as well as expenses for wheelchairs and renovations to make living at home wheelchair accessible.

Some of the catastrophically injured will have the benefit of extension insurance purchased by themselves or by a family member. However, others may not have had the extended coverage, or were pedestrians or young people.

The Committee looked at the issue of retroactivity generally, and specifically with respect to increasing the limit for rehabilitation benefits.

On a general basis, retroactivity could be argued for all of the proposed changes. For example, those who received income replacement benefits according to the 1995 legislation may find their situations are different from what they will be for persons injured in automobile accidents in the future. These people could make the same argument for retroactivity of their benefits. However, in the instances where future benefits would be less than provided for in the 1995 legislation, retroactivity could be argued as unfair, even though people have in some cases been over-compensated.

The Committee recognized that while an argument for retroactivity could be made for many recommendations, the argument for applying it to a change in the rehabilitation limit is particularly compelling: such a provision would provide extraordinary relief for people who have been catastrophically injured. However, the Review Committee concluded that it would be inappropriately arbitrary to make distinctions between different benefits on the question of retroactivity.

Implications

Legislation and Regulations

Legislative change will be required to implement this recommendation.

Cost

SGI's actuary estimated that costs would increase by an estimated $1,453,000 annually if the current limit was removed. The Review Committee's actuary reviewed this analysis and identified concerns related to the lack of data for costs in excess of the limit (currently only two cases) and the fact that the data that does exist is not fully mature. Accordingly, the Review Committee's actuary noted the possibility of a significant variation from the estimate. The financial impact of the Committee's recommendation can therefore be expected to exceed $1,453,000 annually.

Benefit for Personal and Home Care

Recommendation

That the care grids for personal and home care assistance be revised and benefits include activities normal to operating that injured person's home.

The needs of injured persons with respect to personal and home care are currently assessed using personal care grids. The maximum at this time is $596 per week, based on a system of allocating points across the various functions. The Committee noted that the current grids and point system do not balance different functions fairly, and they do not include certain functions that an injured person requires as part of his or her personal needs.

The Committee also noted that a person who suffers a brain injury and requires daily supervision (in addition to personal and home care assistance) is not sufficiently compensated by the current care grids.

SGI is recommending this change based on experience over the past five years, and on a study by a committee including health care workers.

Current Situation

The legislation provides for "personal assistance expenses" in Section 158 of **The Automobile Accident Insurance Act**:

> *"...if a victim is unable because of an accident to care for himself or herself or to perform the essential activities of everyday life without assistance, the insurer may pay a benefit to reimburse the victim for expenses related to personal home assistance."*

The maximum allowed for care benefits is currently $596 per week, indexed to the Consumer Price Index.

Regulation 44 and Appendix D of **The Personal Injury Benefits Regulations** detail what is included in this benefit. The benefit is calculated based on the number of points allotted within four grids: personal care, home care, supervision and particular supervision.

Personal home care includes:

- Arising from bed
- Dressing
- Washing
- Bladder relief
- Bowel movement
- Undressing
- Going to bed
- Eating
- Use of available facilities

Home assistance includes:

- Preparation of breakfast
- Preparation of lunch
- Preparation of dinner
- Light housekeeping
- Housecleaning
- Laundry
- Purchase of supplies

The need for supervision is calibrated as follows:

- No need for supervision
- In need of slight supervision
- In need of moderate supervision
- In need of constant supervision

Particular supervision deals with special needs, such as the supervision of blind people until they start to function on their own.

Commentary

The Committee agreed that the current grid system should be changed. The Committee noted that SGI had looked at this issue in some detail and that a team of health care workers from a variety of sub-specialties examined the grids and recommended that the personal care grids be changed in order to better assess the relative importance of different tasks. The issues addressed included the following:

- ***The current point allocation is not always fair.*** For example, using the personal care and home assistance grids, a person who requires assistance with dinner preparation is allowed eleven points, whereas a person who requires assistance with laundry is allowed one point. The experts have examined all the tasks and have reassessed their relative significance in terms of expenses for assistance.

- ***The current care grids do not cover some common assistance requirements.*** For example, there is no provision for snow removal, lawn and garden care, and transportation (such as taking children to school). The list needs to be expanded to cover all the expenses of running a household where the injured person is now unable to do so.

- ***Persons with special needs are insufficiently compensated by the current care grids*** – for example, a person who suffers a brain injury and requires daily supervision (in addition to personal and home care assistance). An increase in the amount allowed for mental care to half the benefit allowed for physical care would put these individuals on an equal footing in terms of overall functional ability.

- ***The current personal care grids do not provide adequate assistance for those who are catastrophically injured.*** The reassessment of relative tasks and the increase in amounts for mental care will ensure that the assistance for the catastrophically injured is appropriate.

In addition to the changes recommended by SGI, the Committee recommends that the grid include a residual category of any other item of expense to cover activities normal to operating that injured person's home – for example, chopping wood. Also, the Review Committee acknowledges that the increased amount for mental care may not be sufficient in some circumstances, and encourages SGI to monitor and review the use of this benefit as necessary.

Implications

Legislation and Regulations

Legislative change will not be required to implement this recommendation. However, regulatory change may be necessary.

Cost

SGI's actuary has indicated that the financial implications of implementing this recommendation should be in the order of a $345,000 increase annually. A potential increase above this level may be required to include "activities normal to operating that injured person's home".

> **"The Committee noted that SGI had looked at this issue in some detail and that a team of health care workers from a variety of sub-specialties examined the grids and recommended that the personal care grids be changed in order to better assess the relative importance of different tasks."**

Definition of Catastrophic Injury

Recommendation

That the definition of catastrophic injury be made clear and that it be broadened to include not only quadriplegia, paraplegia and severe brain injury, but also additional impairments such as total blindness and complete loss of two limbs.

Current Situation

The term "catastrophic injury" is used for determination of specific benefits provided for in Part VIII of **The Automobile Accident Insurance Act**. The current interpretation of catastrophic injury used by SGI includes quadriplegia, paraplegia and severe brain injury. Although there are a number of important provisions that depend on the injured person's injuries being categorized as "catastrophic", there is no definition of "catastrophic" in the legislation.

Commentary

The current interpretation excludes some other serious injuries, such as total blindness. As well, without a definition in the legislation, there is a risk that SGI's interpretation will be challenged and an interpretation that is too wide will be adopted.

In its submission to the Review Committee, SGI recommended a legislative change based on the wider definition of catastrophic injury used in Ontario. Consideration of this should be undertaken by a panel of medical experts in Saskatchewan.

The Review Committee agreed with SGI that a clear definition was needed and that it should be slightly broader than the one currently used, using Ontario legislation as a guide.

Implications

Legislation and Regulations

Legislative change will be required to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

Catastrophic Injuries - Lifelong Maintenance

Recommendation

That reasonable home renovations be funded to meet the specific and changing needs of catastrophically injured persons.

Current Situation

Currently, Section 110(1) of **The Automobile Accident Insurance Act** provides that an injured person is entitled to a benefit for altering a residence to meet special needs resulting from the nature of the injury.

Commentary

The Committee heard from a catastrophically injured individual who pointed out that the home renovation benefit is currently restricted to a one-time situation. The individual noted that this limit does not recognize the natural changes of family status and home location as an individual progresses through life.

The Committee agreed that appropriate and reasonable renovations should be covered as a benefit to meet specific needs of the catastrophically injured person.

Implications

Legislation and Regulations

No change to legislation is required. SGI can implement this change through policy interpretation of the existing legislation. No change to regulations is required.

Cost

There would be no cost of implementing this recommendation as it is currently the practice of SGI to make such payments on an "ex-gratia" basis.

Benefit for Accompanying Care Expenses

Recommendation

That the accompanying care benefit be expanded to pay expenses and income replacement when another person is helpful to the rehabilitation process if it is recommended by a medical practitioner.

Current Situation

Income replacement, travel expenses and expenses for accommodation are paid in some cases for persons required to accompany an injured person to an examination or treatment. The current provision is restricted to the situation where the accompanying person is needed due to the injured person's physical or mental condition or age. This is provided for in Section 171 of **The Automobile Accident Insurance Act**, and the corresponding Regulations 58 and 59 in **The Personal Injury Benefits Regulations**.

Commentary

SGI has recommended that the provisions in Section 171 and the Regulations be expanded slightly to clarify what is current practice in paying for expenses for accompanying care for an immediate family member.

The provision needs to include any situation where a medical practitioner recommends that another person accompany the injured person to the required examination or treatment. For example, if a young adult is seriously injured and a parent or friend wishes to take a leave of absence from work and stay with him to help in his rehabilitation, and the medical practitioner feels that this would be helpful, the parent or friend should be permitted expenses as well as income loss.

The expenses should apply whether or not the recommendation is due to the injured person's physical or mental condition or age, and whether or not the accompanying person is a family member or someone close to the injured person. However, a medical practitioner must recommend the accompaniment of another person.

The Committee agreed with SGI's recommendation, but with an extension to include a person beyond a family member in the benefit.

Implications

Legislation and Regulations

Legislative change and regulatory change will be required to implement this recommendation.

Cost

The financial implications of implementing this recommendation should be minimal.

Benefits for Intangible Loss

Benefit for Permanent Soft Tissue Injury

Recommendation

That for assessing permanent functional impairment, SGI adopt the Manitoba schedule, which includes soft tissue injuries and impairment of neck and back function.

That the Table of Successive Remainders be changed to allow for calculation of the permanent impairment benefit using the method from the American Medical Association guidelines.

Soft tissue injuries are a frequent result of automobile accidents, particularly as a result of whiplash. The Personal Injury Protection Plan allows for treatment and rehabilitation of soft tissue injuries, but does not include a benefit for the "intangible" (or "non-pecuniary") loss of the injured person. A complicating factor is that soft tissue injuries often do not exhibit objectively observable physical findings.

Many of the injured persons who contacted the Review Committee and were distressed or angered by their treatment for soft-tissue injuries had accidents shortly after the new Plan was introduced. This was a time when SGI had not yet fully adjusted to its new role as a first-party insurer. Also, the spectre of a tort action was in the immediate past – in some cases only days or months before the accident had happened. This time was also early in the development of the network of secondary and tertiary treatment centres, so injured persons at that time did not have the full benefit of services that are available now.

Compensation for the intangible loss associated with soft tissue injuries is expensive for at least two reasons:

- The percentage of cases is very high, estimated to be approximately 80% of all auto-related injuries; and,
- Difficulty of assessment makes the process of claiming compensation expensive by comparison with compensating tangible losses.

In addition, the process of suing for pain and suffering in a tort action adds a significant expense because fault has to be proved as well as the severity of the injuries. Although a final tort award may be higher than would be available under a no-fault scheme, much of this is off-set by legal costs.

In cases not covered by the Permanent Injury Benefit, available resources are best allocated to the *treatment* of soft-tissue injuries rather than to compensating them. This is consistent with the focus on rehabilitation under the Personal Injury Protection Plan. The primary wish of those injured in accidents is to recover as quickly as possible, and it is the aim of the Plan to provide resources to assist them to that end. Providing compensation to injured persons for intangible loss may sometimes provide closure, but that can be achieved in other ways.

Permanent functional impairment that can be effectively diagnosed, including that resulting from soft tissue injury, should be compensated by the Personal Injury Protection Plan. Permanent impairment benefits are currently paid to persons who sustain permanent injuries in an automobile accident. Benefit amounts are determined using a schedule with a current limit of $135,456, indexed to inflation. The benefits are based on "percentage of whole body impairment."

The permanent impairment benefit should be extended to cover permanent impairment from soft-tissue injuries where there are objectively observable symptoms. This benefit would therefore compensate for intangible losses from permanent soft tissue injuries.

Current Situation

Permanent injury benefits are calculated by a schedule that indicates the percentage functional impairment that will result from a specified injury. The relative percentage impairment is indicated in Sections 153-156 of **The Automobile Accident Insurance Act** and Appendix B of **The Personal Injury Benefits Regulations** benefits for certain impairments. The amount is calculated as a percentage of whole body impairment, for which the benefit is currently $135,456. This leads to different levels of benefit for different types of injury. For example, based on the current schedule, amputation below the knee is 30% of the maximum, leading to a permanent impairment benefit of $40,637. Scarring is determined at 4% and can be cumulative.

Currently, the permanent impairment benefit under the Personal Injury Protection Plan does not include a benefit for permanent soft tissue injury.

Commentary

The Review Committee heard from a number of injured people who felt that the relative weight given to different injuries was unfair. In particular, the valuation of non-facial scarring by comparison with injury to limbs and impairment of functional movement was identified as inappropriate.

SGI identified this issue and recommends adopting the Manitoba Public Insurance schedule of benefits to improve fairness. A team of medical experts in Manitoba developed the schedule, which is based on the American Medical Association schedule. For example, while the benefits for facial scarring would remain unchanged, the new schedule would reduce by approximately half the benefits for other scarring. The Committee was persuaded that existing permanent impairment schedule for assessing functional impairment should be replaced by the one proposed by SGI, which better reflects the comparison between different types of injury.

A carefully considered view was expressed to the Committee that this schedule is the best readily available reference point for the comparison of injuries. There are also no particular difficulties with respect to implementation of the schedule by comparison with the one used at present. The change respects the value of *equality* and *equity* between different injured persons by attempting to assess the relative impact and severity of different types of functional impairment on the injured person's life.

A second problem identified by SGI was with respect to the way the permanent injury benefit schedule cumulated different injuries where there were multiple injuries. This involves a "table of successive remainders" whereby the most significant injury is given its full percentage value (for example 30%) and then subsequent injuries are calculated as a percentage of the remainder (70%). If the second injury was valued at 10% in the schedule, it would cumulate with a first injury of 30% by adding 7% (10% of 70%), leading to a total benefit of 37%. If this is not done, then a series of multiple injuries might quickly cumulate to more than the maximum, and be completely out of proportion to the benefit of catastrophic injury. However, when an injury is assessed at less than 4%, it is merely added to the previous total, and this can lead to problems.

The Review Committee agreed with a recommendation by SGI that the schedule of successive remainders be altered in a way that would be more fair. The proposed method suggested was a calculation method used in the American Medical Association guidelines.

Concerns Expressed by the Public

The Review Committee heard many injured people express dissatisfaction with the manner in which the Personal Injury Protection Plan covers soft-tissue injuries. Some presenters exhibited anger and anguish over the way in which they had been treated by the Plan and by some of those administering the Plan.

Many of these complaints originated from experiences during the early days of the Personal Injury Protection Plan. The Committee notes that some of the difficulties may have resulted from the fact that most of the Personal Injury Representative personnel had been transferred from pre-1995 adjuster positions. In that role, under the tort system, adjusters were representing a defendant motorist in a tort claim and their allegiance was then with the defendant and SGI, the defendant's insurer, rather than with the injured person. The transfer to the Personal Injury Protection Plan required a shift in role and a focus on the rehabilitation of the injured person.

Another factor was that in the immediate aftermath of the change to a predominantly no-fault scheme, there were a limited number of treatment centres to which injured persons could be referred. Furthermore, some injured persons were aware that prior to the inception of the Plan they might have been able to sue in tort for their injury, and thought that they might have been entitled to a substantial sum of money. They felt that whiplash injury had been disenfranchised by the change from tort law to no-fault.

The Review Committee also heard from injured persons who felt that the actual health care treatment they had received under the Personal Injury Protection Plan for soft-tissue injuries was ineffective and sometimes actually detrimental. Some injured persons felt that the care they received from both secondary and tertiary treatment centres was of a "cookie-cutter" variety, where all injured persons were pressured through a standard treatment regime.

Affordability

The Review Committee considered estimates of the cost of providing compensation for pain and suffering in non-permanent cases. The overwhelming evidence was that the cost of such compensation under the tort system had been a major factor in the escalating costs of that system. Also, the Committee was informed that jurisdictions which provide a tort action for non-pecuniary loss have auto accident premiums far in excess of the Saskatchewan premiums.

The Review Committee considered viewpoints and literature concerning psychological factors that may accompany the provision of compensation for pain and suffering. One view is that such compensation may sometimes inhibit recovery. Another is that such compensation may sometimes be therapeutic and provide closure.

Purpose of Compensation for Intangible Injuries

Assessment of compensation for intangible loss is extremely difficult, and the legal system's approach to intangible loss has always been controversial. Interrelated questions are:

- What loss is being compensated?
- What is the purpose of monetary compensation?
- How much money, if any, is appropriate?

The first question can be illustrated by reference to injury to a person's foot. Is the compensation for loss of "a foot, a function, or a feeling"? The emphasis in a tort action is on the loss of the functional use of the foot, and on how that is subjectively experienced by the injured person – the injured person's "feeling" of and about the loss of the foot (lack of awareness of the loss would mean no award).

The second question asks whether the money is provided: (a) to compensate the injured person; (b) to provide a solace for the loss; or (c) to provide money so that the injured person can enjoy other activities to offset the feeling of pain and suffering and the loss of the ability to participate in pre-accident activities. Tort awards for intangible loss are justified on the basis that they may provide solace, and that the injured person should be provided money for alternative activities (this is called "the functional approach" to assessment).

The answer to the third question in part follows from the conclusions reached in the first two, but so imprecise are the criteria that any award ends up being somewhat arbitrary and pragmatic. This has been fully recognized in leading tort decisions. In result, awards were "capped" for catastrophic cases. In 1978 it was decided that the upper limit of awards should be $100,000. Because of inflation, this upper limit is now about $270,000. Affordability by society is openly recognized as one of the factors in determining the upper limit.

Difficulty of Assessment

The Committee also considered the difficulties with respect to intangible loss from a medical standpoint. "Pain" and "suffering" is very difficult to measure on any objective basis. Assessment is heavily reliant on subjective statements by the injured person and his or her significant others. Objectively observable, "evidence-based" assessment is now emphasized by the medical community. If this approach is accepted under a compensation system, it leads to an emphasis on compensation for observable "functional" impairment, rather than for "pain and suffering" per se. However, in the process of awarding compensation for functional impairment, the system would then be indirectly compensating for any pain and suffering associated with the identified impairment.

Alternatives

The Review Committee considered a range of alternatives, including the following:

- That a tort action be re-instituted for intangible losses, including pain and suffering, possibly with a deductible.
- That Permanent Injury Benefit be expanded to include a wider range of diagnoses and functional impairment, particularly with respect to neck and back injuries.
- That a benefit to compensate for pain and suffering be added for temporary or permanent injury, possibly with a deductible.

General Conclusion

The Personal Injury Protection Plan emphasizes rehabilitation of injured people and universality of coverage. It therefore provides much more extensive benefits for expenses and health care costs than would normally be available if an injured person had a tort action against a motorist. The benefits might be as much as five times more than in a tort claim unless the at-fault motorist was carrying extension insurance or was using the vehicle in the course of employment, or perhaps had personal funds to satisfy a judgement.

As a trade-off, the Personal Injury Protection Plan only provides benefits for intangible loss where the injured person suffers permanent injuries. He or she is then entitled to a permanent injury benefit. It is recognized that some component of the benefit is for the pain and suffering experienced by the injured person as a result of the functional impairment for which the benefit is given.

However, the Committee concluded that the permanent injury benefit should be extended to new functional impairments that may be the result of whiplash. As well, the relative weight of certain impairments should be adjusted and SGI should consider the developments in assessment of non-permanent intangible loss under the no-fault plan in Quebec.

The list of injuries covered by the permanent impairment benefit is fairly limited. Under Sections 153-156 of the Act and Appendix B of **The Personal Injury Benefits Regulations**, benefits are determined using a schedule. The schedule includes cases of catastrophic injury as well as other functional impairments, such as the loss of a limb. However, the schedule does not cover some of the functional impairments that can result from soft-tissue injuries. Using the approach taken in Manitoba, the SGI schedule should be extended to cover all objectively observable functional impairments, including those that may be the result of permanent soft tissue injuries.

Implications

Legislation and Regulations

Legislative change will be required to implement this recommendation.

Cost

The Review Committee's actuary estimates that the cost of adopting the Manitoba Schedule will result in a decrease in costs of $1,788,000 per year.

Maximum Permanent Impairment Benefit

Recommendation

That the amount of the Permanent Impairment Benefit for catastrophic injuries be increased to $175,000.

Current Situation

The amount of the permanent impairment benefit for catastrophically injured people is currently $135,456, indexed to inflation. In tort actions, the highest award for non-pecuniary loss, which includes pain and suffering, was prescribed by the damages "trilogy" of Supreme Court of Canada cases in 1978 as $100,000. The present day value of this amount is approximately $270,000. The Manitoba and Quebec no-fault plans provide maximum permanent impairment benefits of $110,000 and $175,000 respectively.

Commentary

In its submission to the Review Committee, SGI recommended that the Permanent Impairment Benefit for catastrophic injuries be increased to $270,000. This would make the maximum no-fault benefit payable in catastrophic injury cases almost identical to the maximum award for non-pecuniary loss in a tort action.

The Review Committee considered other alternatives:

- That the maximum benefit for catastrophic injuries be raised to $200,000. This would make the benefit approximately 75% of the maximum tort award, and would be the same as tort if one assumes that 25% of an award was be deducted for costs and legal fees.
- That the maximum benefit for catastrophic injuries be raised to $175,000, consistent with the Quebec level.

In recommending a change to a maximum benefit of $175,000, the Review Committee noted that this change would only affect catastrophic injury situations, and that the remaining Permanent Injury Benefits would be based on the current maximum of $135,456. The Committee was concerned that an increase of more than the recommended amount would be proportionately too much by comparison with non-catastrophic injuries, and would put too much stress on the designation of a person's injuries as "catastrophic". On the other hand, to increase all permanent impairment benefits would involve a costly increase in insurance premiums.

Implications

Legislation and Regulations

Legislative change will be required to implement this recommendation.

Cost

The Review Committee's actuary has estimated that the financial implications of this recommendation are an increase in costs of $716,741 annually.

Consideration of Quebec's New Benefit for Intangible Loss

Recommendation

That SGI evaluate the feasibility and affordability of Quebec's Intangible Loss Benefit.

Current Situation

The no-fault plan in Quebec is experimenting with the provision of benefits for non-permanent intangible loss, and a new system of assessing all intangible benefits. The new benefits will likely be in place by the end of the year 2000. The maximum benefit for non-permanent injury will be $1,000.

The calculation of the benefits under the new Quebec system is based on extensive studies by medical experts of over 2000 claims. Injuries are classified by severity as a percentage of the maximum benefit ($175,000), and there is a sub-classification of the degree of functional impairment resulting. For permanent injuries, this actually led to an estimated reduction in the amounts which would have been paid out, and Quebec was therefore able to raise the level of its base figures accordingly. There would thus be no cost in moving to this more sophisticated assessment system for permanent injuries.

In Quebec, where there is a lower incidence of whiplash claims than in Saskatchewan, the percentage of permanent injuries is one-third and of non-permanent injuries two-thirds. Under a new system, non-permanent injuries are classified into 12 categories, and the severity of the injury within the category is assessed on a scale from 1-6. Since the benefit for the most severe injuries is $1,000, most benefit payments are much less than this. After analyzing 23,000 claims, it is estimated that the average benefit will be $350.

Commentary

If this type of benefit were offered in Saskatchewan, it is estimated that it would cost in the region of $2,000,000. As the amount of the benefit is raised, the cost increases at a much faster rate than by mere multiplication of the basic estimation because the side-effects of increasing benefits begin to have an impact on the overall cost. More money means more argument about functional disabilities and classifications, and the effect may have an impact on other benefits.

It is the view of the Review Committee that SGI should seek information from the Quebec no-fault plan and study the benefit structure being implemented there once the province has gained experience from the change. However, such study will obviously take time. It does not seem worthwhile for Saskatchewan to begin immediately to implement intangible benefits that are so small. The cost would simply not justify the result, which in many cases would seem to some injured persons to be almost insulting.

Implications

Legislation and Regulations

No legislative and regulatory change is required to implement this recommendation.

Cost

This recommendation has no financial implications.

Income Replacement Benefits

The Committee considered a number of issues related to calculation of the income replacement benefit of the Personal Injury Protection Plan.

Income Replacement Benefit Calculation

Recommendations

That the income replacement benefit be based presumptively on employment at the time of the accident, but that where the injured person can show that he or she would likely have earned a larger sum in the year prior to the accident, that the income replacement benefit be based on that sum.

That in all cases unless otherwise specified, there be an option available upon request of the claimant for a reassessment of the income replacement benefit after 180 days following the accident, and that from that time onward the income replacement benefit be based on the greater amount of minimum wage or the average annual income in the two years prior to the accident.

That in the case of a person who was a caregiver of one or more persons at the time of the accident, the income be based on an assessment of the probability that the injured person would have earned income in the future and when that income would have been earned; and that the assessment be based on the education, training, work experience and physical and intellectual abilities of the injured person prior to the accident.

The Committee was of the view that for short-term losses there should be a presumption that the income at the time of the accident was the appropriate measure, but that the injured person should have the right to prove that a larger income would probably have been earned. The committee was also of the view that a more careful assessment of the injured person's earnings prospects should be made 180 days following the accident, and it should be based on the average of the previous two years of earnings experience. This should provide a fair basis for a long-term loss. Such an assessment might prove to be more or less than the actual earnings of the injured person at the time of the accident, but it would be more realistic.

In the case of injured persons who were caregivers at the time of the accident, even a two-year window of earnings experience might be inappropriate. In these cases, a fairer assessment would be to evaluate the injured person's pre-accident potential for returning to work outside the home, and to assess the income replacement benefit accordingly. Such a benefit would then dovetail with the caregiving benefit, which diminishes in amount as children grow older.

Current Situation

The current assessment of the income replacement benefit is based on the income of the injured person at the time of the accident. This determines the level of income replacement for the full period of the loss, although there are a few exceptions.

Commentary

Currently, the assessment of income replacement benefit is based on what may be a fortuitous circumstance at the time of the accident. The injured person's income level at the time of the accident may be the result of temporary circumstances or may be due to the requirements of caregiving for one or more persons. Alternatively, the injured person may have been earning an unusually high amount immediately before the accident – for example, through involvement in seasonal work.

Although Section 113 of the Act provides for a higher income replacement benefit in special circumstances, this Section is currently too narrow.

The injured person's earnings at the time of the accident can be used as the foundation for assessment in most cases and should be presumed to be the basis for the assessment unless the injured person is able to prove the likelihood that he or she would have been earning more than that figure.

After 180 days, a more thorough assessment is warranted, since by that time the injured person's medical and occupational prognosis may be clearer. At this point it seems necessary to examine more closely what the injured person might have been expected to earn in the long-term. To do this, it seems fairer to examine the injured person's pre-accident earning record over a longer period of time. In most cases, the best indication of a person's loss can be gleaned from the injured person's earnings during the one or two years prior to the accident.

In the case of injured persons who were caregivers, the two-year method should not be used. Rather, a separate assessment of the potential of the injured person for employment based on experience and ability should be made, such as was previously done in limited circumstances under Section 113. The earnings experience of the two years prior to the accident may be a very poor guide with respect to long-term income loss and may under-compensate the injured person.

Since the assessment of loss of caregiving benefits ought to be based on actual replacement-cost expenses, as recommended by the Committee, there will be no overlap and no overcompensation. As children grow older, the caregiving function diminishes and it can be predicted in the majority of cases that the caregiver will return to part-time or full-time employment.

The Committee also noted that the provision in Section 113 for assessment of the income replacement benefit in special circumstances might be extended to deal with the situation of a youth or student who is permanently but not catastrophically injured. The Committee thought that a youth or student who is permanently injured should be permitted to have his or her income replacement benefit based on evidence of earning potential, using indicators such as demonstrated ability, educational achievement and aptitude and any other information, including statistical information.

Implications

Legislation and Regulations

Legislative changes are required to implement this recommendation. Sections 111-113 will have to be replaced by new Sections.

Cost

The Review Committee's actuary estimates that the cost of implementing these recommendations will be minimal.

Maximum Earnings Covered

Recommendation

That the Maximum Yearly Insurable Earnings (MYIE) remain at $56,855 (and continue to be indexed to the Industrial Average Wage).

On initial examination, arguments can be made for either an increase or a decrease of the Maximum Yearly Insurable Earnings under the Personal Injury Protection Plan.

- An increase in the maximum insurable earnings provides greater restoration of the pre-accident earning potential for some injured persons with higher incomes. It matches more closely what is theoretically available in a tort action. If restoration of loss is emphasized, it can be said that this should apply to everyone.
- A reduction in the maximum insurable earnings will reduce the overall cost of benefits. It will also go towards remedying the problem that high income earners are not paying higher premiums for this protection, and it will therefore bring the benefits more in line with the premiums paid.

Current Situation

The maximum insurable earnings is currently $56,855 gross income, including the value of fringe benefits paid for by the employer. This represents the inflated value of $50,000 in 1995, calculated according to Section 138(1) of **The Automobile Insurance Act**. Any loss of earnings above $56,855 are only claimable in a tort action under Section 103 where another party was at fault. According to 1997 figures from Statistics Canada, only 8.6% of people in Saskatchewan earn more than $50,000 per year. The current level of maximum yearly insurable earnings therefore covers the majority of wage earners in the province.

Commentary

The Review Committee considered the following alternatives:

- Lowering the maximum insurable earnings to $40,000;
- Raising the maximum insurable earnings to $60,000;
- Raising the maximum insurable earnings to $75,000; and,
- Keeping the maximum insurable earnings at $56,855.

Compensation in a tort action is theoretically for the full amount of lost income, whatever the level of that income. Insofar as a no-fault scheme is seen as a substitute for tort actions, it might be argued that the scheme should provide full compensation whatever level of earnings the injured person enjoyed. Respect for the principle of *restoration* supports this. Such a value is reflected in the "compensatory principle" in tort law, which would attempt to put the injured person as nearly as possible in the position he or she would have been in if there had been no accident. This might suggest that the maximum insurable earnings be raised to a higher figure, such as $75,000.

Countering this view are a number of arguments. First is the point that any award in a tort action is almost always reduced by court legal fees. Under the tort system injured people do not *in fact* receive nearly the full compensatory measure of their loss. Second, where an injured person falls into a higher income bracket, and has been injured for any length of time, the insurance plan maximum of $200,000 will quickly be exhausted by income replacement and the amounts calculated under the other types of damages.

An injured person may have been injured by a motorist who is able to fund an award for higher earnings, either because he or she carried extension insurance or had other financial resources. This type of situation is not properly compared to the level of benefits under the Personal Injury Protection Plan because the money for that extra income replacement is coming from outside sources over and above what is paid by a motorist under plate insurance. In order to match that level of income replacement, and to make a fair comparison, an increase in premiums would need to be factored in.

A breakdown of claims for income replacement benefit based on open Income Replacement Benefit files in April, 2000 was as follows:

Annual Income	Percentage of Claims
<$20,000	42%
$20,000 - $30,000	27%
$30,000 - $40,000	14%
$40,000 - $50,000	9%
$50,000 - $60,000	4%
> $60,000	4%

As a general consideration, questions of cost and *affordability* argue strongly against a no-fault scheme providing benefits at a very high level. *The burden on motorists would be too great if all injured persons, whether or not another person was at fault, and whether or not they themselves were at fault, received full compensation for their injuries.*

As well, there is the matter of fair loss spreading, given that the premiums for the Personal Injury Protection Plan coverage are not calibrated to income. Higher-income people are paying proportionally less for their coverage of a higher income loss than lower-income people are paying for a lower income loss. This factor also supports the rationale for higher incomes not being fully covered by the Plan.

Despite these considerations, the Committee noted that any further reduction in the maximum yearly insurable earnings would raise a systemic problem running counter to the thrust of the Personal Injury Protection Plan. If the level of no-fault benefits is further reduced, then even more cases will fall within the purview of the Section 103 tort action. The tort action, rather than no-fault, may then begin to assume a prominent role with respect to compensation for income replacement. The result of such a shift could be another potential *distributional* issue, with lower-income earners in effect subsidizing higher-income earners. Tort law generally has this effect.

The Personal Injury Protection Plan must guard itself against such piecemeal erosion. Once such erosion begins, by this means or any other, then the Personal Injury Protection Plan risks gradual long-term depletion in the name of reduced cost. Gradually, as happened between 1946 and 1994, tort actions would become the more prominent basis for recovery, and the modified no-fault plan would become a modified tort or tort "add-on" plan.

The Committee concluded that there should not be any significant shift in the no-fault focus of the Saskatchewan scheme. The Committee noted that this would have to be carefully watched if the full protection of the no-fault scheme is to be maintained in the long run.

In the alternative, if the current level of the maximum insurable earnings is maintained, it might be argued that as a matter of *equity and equality*, drivers and owners who wish for protection at a higher level of income under the basic insurance should be required to pay higher premiums. However, it might be difficult to achieve complete fairness, since not all injured persons are premium-payers.

Implications

Legislation and Regulations

No change is recommended.

Cost

This recommendation has no financial implications.

Income Replacement Based on 90% of Net Income

Recommendation

That the Income Replacement Benefit continue to be calculated on the basis of 90% of the injured person's net income.

Current Situation

The award of benefits under the Personal Injury Protection Plan is based on net income after tax. By Section 136(1) the actual benefit is for 90% of the pre-accident net income of the injured person.

Commentary

The Review Committee heard concerns from some injured people that their replacement income was only at the level of 90% of their "take home pay". They felt that this constituted a meaningful reduction of the amount of their pre-accident earnings.

A comparison can be made with tort actions under the common law. The argument is made that the common law not only awards damages for loss of gross earnings, but calculates the damages based on the full compensatory principle, suggesting that the income replacement benefit should be close to 100%.

Countering this is the fact that in a tort action an injured person does not receive an exact replica of the pre-accident level of earnings and potential future earnings. The calculation is almost always reduced for "contingencies", such as sickness, accidents and unemployment. The reduction is geared to the facts, but will normally be from 5%-15%, depending on the particular circumstances of the injured person's employment field and general life situation. In addition, some savings of expenses may occur where a person is not at work, such as the cost of transport and work-related clothing. Furthermore, a tort action never results in complete reimbursement because of the legal costs of bringing the action.

An additional argument is that, because under the Personal Injury Protection Plan income replacement is compensated by periodic payments rather than a lump sum, the award of more than 90% for lost earning can be a disincentive to recovery and return to work.

The Committee concluded that Income Replacement Benefits should remain as 90% of net earnings.

Implications

Legislation and Regulations

Legislative and regulatory change will not be required to implement this recommendation.

Cost

This recommendation has no financial implications.

Catastrophic Injury Income

Recommendations

That in cases of catastrophic injury, with the exception of students and youth, the income replacement benefit be paid from the date of the accident and represent the greater of actual income or the industrial average wage.

That students or youth with catastrophic injury receive the benefit after current studies or at age 16.

That anyone earning greater than industrial average wage at the time of the crash receive an income replacement benefit based on actual income.

Current Situation

As with respect to other injured persons, a person who is catastrophically injured is at the moment held for life to the level of income earned at the time of the accident, or, if the injured person was not earning full-time at the time of the accident, to the level of earnings that he or she would have been earning after 180 days from the accident. Earning potential is not considered.

Commentary

Even if other improvements recommended in this report are accepted, the income replacement level for a catastrophically injured person may remain at a very low level. Such persons will never get the opportunity to show their real potential had they not been injured. The Review Committee agreed with SGI that they should be treated generously in that they should at least enjoy an earnings level commensurate with the average in the community.

The position of youths and students should be similar, except that their entitlement should be at the age of 16 or at the time when their current studies come to an end.

Implications

Legislation and Regulations

Legislative change will be required to implement this recommendation.

Cost

SGI's actuary has estimated that this change will result in a cost increase of $1,377,000 annually.

Income Replacement Benefit for Injured Persons Over Age 65

Recommendations

That in calculating the Personal Injury Protection Plan income replacement benefit for an injured person over the age of 65, a benefit be paid only if the individual held employment at the time of the crash.

That for an injured person over the age of 65 who held employment at the time of the crash, the income replacement benefit be stepped down over the next four years to age 69.

That if an injured person over the age of 65 has received an income replacement benefit for the previous two years or more, a pension benefit be paid based on the duration of time he or she received an income replacement benefit. That in defining the pension benefit, SGI investigate models such as the one used by the Workers' Compensation Board.

Current Situation

Currently, **The Automobile Accident Insurance** Act provides for income replacement benefits regardless of age. Any person who is injured in a motor vehicle crash who is still injured at 180 days is entitled to an income replacement benefit for life, if necessary. The benefit is based on the job her or she could have held prior to the crash.

Even in situations where an individual has never worked outside the home and had no intention of doing so, he or she is compensated at minimum wage level for a potential loss of income.

Commentary

This over-compensation situation was raised with the Committee by SGI, and the Committee agreed that it should be addressed. The Committee was informed that Manitoba benefits originally allowed for termination of income replacement at age 65 and that Manitoba is now planning to implement a provision to pay a pension after age 65. The Committee was also made aware that Quebec reduces income replacement benefits after age 65.

The Committee recognized that individuals may, in fact, choose to remain employed after age 65, but agreed that the income replacement benefit should be stepped down after that time.

Implications

Legislation and Regulations

Legislative change is required in order to implement this recommendation.

Cost

SGI's actuary has estimated that implementation of the recommended changes would result in a decrease in costs totalling $3,022,000 annually.

Deductions of Employment Insurance Premiums and Canada Pension Plan Contributions in Calculating the Income Replacement Benefit

Recommendation

That in calculating the Personal Injury Protection Plan income replacement benefit, deductions continue to be made for employment insurance and Canada Pension Plan premiums.

Current Situation

Currently, the income replacement benefit is calculated using a formula provided in Section 137(1) of **The Automobile Accident Insurance Act** and includes the deduction of Employment Insurance (EI) premiums and Canada Pension (CPP) contributions.

Commentary

The Committee heard from a number of injured persons who felt that the exclusion of EI premiums and CPP benefits from the income replacement benefit was not fair. These individuals felt that they should be entitled to these amounts so that they might use them to secure alternative arrangements, particularly for future pension benefits.

The Committee recognized that the argument for an alternative to CPP contributions (e.g., such as contributions to an RRSP) had merit. However, the Committee decided that in application it was not practical and was also inconsistent with standard insurance practice for replacing income that is actually lost.

With respect to EI premiums, the Committee noted that they are only payable and applicable for individuals while employed, and that employment status changes when individuals are receiving an income replacement benefit. Accordingly, the Committee felt that payment of these premium amounts as part of the income replacement benefit would be inappropriate.

Implications

Legislation and Regulations

No change in legislation or regulations is recommended.

Cost

No cost implications are involved in this recommendation.

Income Replacement Benefit for Self-employed Persons

Recommendation

That in calculating the Personal Injury Protection Plan income replacement benefit for self-employed persons, the benefit should be the greatest of:

(a) actual net income (using prior three years' calculations), adding back certain fixed expenses for the first 12 months only and paying any lease cancellation costs;

(b) average Saskatchewan income for that occupation and level of experience (Appendix A of the Regulations), to the limit of actual gross income; if experience is less than three years, full Appendix A be used to allow for business start-up implications; or

(c) replacement labour.

That the injured person be allowed to switch from (a) or (b) to (c) or from (c) to (a) or (b) at any one point when receiving these benefits.

Current Situation

In calculating the income replacement benefit for self-employed persons, the following may be considered:

- Tax returns;
- Average Saskatchewan income by occupation and level of experience (outlined in Appendix A of **The Personal Injury Benefits Regulations**; and,
- Replacement labour costs.

Currently, a self-employed injured person entitled to an income replacement benefit may elect to receive a benefit to hire a replacement worker. However, as provided for in Section 141(2) of **The Automobile Accident Insurance Act**, this choice cannot be revoked. Given the general uncertainty possible when the individual makes an initial choice between the two alternatives, the Committee felt that it would be more appropriate to allow the injured person to make a change if after a period of time he or she wanted to do so.

Commentary

The Committee heard from a number of injured persons who were self-employed and had significant concerns about their benefits under the Personal Injury Protection Plan. The primary concerns were:

- The information requirements (e.g., tax returns and financial statements) to demonstrate income loss – some individuals found this both onerous and intrusive;
- An apparent lack of appreciation for the practical realities of the self-employed working environment – individuals pointed to the variability of income and of expenses over time, including the business start-up period;

- The dependency of many self-employed businesses on one person – some individuals indicated that without their direct ongoing involvement, the business was at extreme risk of failing; and,
- The burden of ongoing fixed business expenses – rent, insurance, and licensing continue to be costs to the injured person even if the business is not active.

The Committee also heard from SGI on the issue of self-employed income replacement benefits. The corporation noted that with the current situation, some self-employed injured persons are not receiving appropriate benefits, and are either over-compensated or under-compensated.

The corporation agreed that those compensated on the basis of net income may continue to be responsible for business expenses such as rent and insurance, and may therefore be in a worse financial position after an injury. On the other hand, the corporation pointed out that those reimbursed according to average Saskatchewan income (by occupation and level of experience) may be over-compensated if their self-employment earnings are lower than average. In these situations, over-compensation can be a barrier to recovery by creating a financial disincentive to returning to work.

The Committee recognized that to fairly address the income replacement needs of a self-employed person could be a complex task. The Committee also noted that the great diversity across self-employed persons and their businesses makes a standardized approach less feasible than in more common employment situations. However, the Committee agreed that the changes proposed by SGI would go some distance to addressing the problems inherent in the current situation.

The Committee went beyond SGI's recommendations on two points:

- Actual fixed costs should be included for a total of 12 months (not 6 months) to allow the self-employed person sufficient time to make other arrangements for these costs; and,
- After making the choice between a replacement worker or an income replacement benefit and then experiencing the impact of the chosen benefit, the self-employed person should be able to revoke that decision and revert to the alternative benefit if he or she feels that it would be preferable. However, this change should only be allowed once.

Implications

Legislation and Regulations

A legislative change is required to implement this recommendation.

Cost

SGI's actuary estimated that the changes recommended by SGI (and also recommended by the Committee) would result in increased costs of $814,000. The additional recommendation for 12 months for actual fixed costs would increase costs by an estimated additional $137,000 according to an analysis by the Committee's actuary. Any costs related to the recommended provision to switch from an income replacement to replacement benefit would be over and above these amounts.

Contractor Option for Replacement Worker Benefit

Recommendation

That in calculating the replacement worker benefit where the use of specialized equipment owned by the injured person is involved, the injured person may choose to hire, at a cost consistent with market value, a contractor that uses other equipment to perform the work.

Current Situation

Section 141 of **The Automobile Accident Insurance Act** provides for a benefit to hire a replacement worker for a self-employed injured person. This benefit is paid if the injured person chooses it instead of an income replacement benefits, and once this choice is made, it cannot be revoked. The maximum benefit under this provision is $550 per week.

Commentary

The Committee considered that the circumstances of self-employed persons may involve the use of specialized equipment that the injured person is not prepared to allow replacement workers to handle. In these situations, the Committee recommends that SGI take a more flexible approach to defining the benefit, including the use of contractors who will use their own equipment to perform the work. The benefit should in these situations be based on market value for the work, which may be higher than the standard for the replacement worker benefit.

Implications

Legislation and Regulations

Legislative change will be required to implement these recommendations.

Cost

The Review Committee's actuary estimates the financial implications of implementing this recommendation and the following one (replacement worker benefit for farmers) is a cost increase of $1,080,000 annually.

Replacement Worker Benefit for Farmers

Recommendation

That in calculating the Personal Injury Protection Plan income replacement benefit for farmers who are injured, the cost of contract workers such as custom combine operators be allowed as an alternative for the replacement worker benefit and at a cost consistent with market value for that work.

That in calculating the Personal Injury Protection Plan income replacement benefit for injured farmers, adjustments be allowed to pay up to the maximum annual benefit in variable amounts (i.e., possibly greater than $550 per week) and times (i.e., according to crop year requirements) so that a farmer may hire replacement workers to deal with seasonal work demands over the year.

Current Situation

Currently, a farmer as a self-employed individual may elect to receive a benefit to hire a replacement worker according to Section 141 of **The Automobile Accident Insurance Act**. The maximum amount for this replacement worker benefit is $550 per week.

Commentary

The Committee heard from a number of farmers that had significant issues with the replacement worker provision. Their primary concerns were:

- The difficulty in finding replacement workers with the skills and experience necessary to do the required work;
- The risk of a replacement worker causing damage to complex and costly equipment and machinery;
- The seasonal nature of farm work, particularly seeding and harvesting, and the impact of an injury occurring at these times;
- The time involved in doing farm work, which can extend over seven days a week and up to 16 hours a day;
- The diversity of skills and experience involved in a farming operations, and the likelihood of needing more than one replacement worker to cover the range of tasks that need to be done; and,
- The limit of $550 per week for a replacement worker benefit.

The Committee recognized the special circumstances faced by farmers who are injured and cannot perform many of the functions involved in operating a farm. The Committee considered that where possible, farmers should have additional options open to them in the determination of benefits. These options should include the following:

- An injured farmer should be able to hire replacement workers on the basis of $550 per week each for a 40-hour week, recognizing that 2 or 3 replacement workers may be required to perform work that can no longer be done by the injured person; and,

- An injured farmer should be able to hire contract workers as replacement workers so that they would use their own equipment to do the required work. This option would be particularly applicable at certain points in the year, including harvesting by custom combine operators.

The Committee felt that these provisions would help ensure more flexibility and fairness in determining benefits for injured farmers.

Implications

Legislation and Regulations

Legislative change would be required to implement these recommendations.

Cost

The financial implications of implementing this recommendation are a subset of the estimated costs involved in the previous recommendation respecting a contractor option for replacement worker benefits.

"The Committee recognized the special circumstances faced by farmers who are injured and cannot perform many of the functions involved in operating a farm. The Committee considered that where possible, farmers should have additional options open to them in the determination of benefits."

Changing the Family Enterprise Benefit to an Income Replacement Benefit

Recommendation

That the Family Enterprise Benefit be moved to the income replacement benefit and be paid until the injured person is recovered or is entitled to an income replacement benefit.

Current Situation

Section 162 of **The Automobile Accident Insurance Act** provides for a family enterprise benefit to reimburse a person for unpaid work in a family business. The benefit allows for paid labour to do the work the injured person would have done, similar to the replacement worker benefit for self-employed injured persons. However, the family enterprise benefit is treated as an expense and is therefore paid out of the total amount of medical and rehabilitation coverage.

The family enterprise benefit is available for 180 days, after which time the injured person is to be determined into an employment and the resulting income replacement benefit will take the place of the family enterprise benefit. In the case of a student, the determination does not need to be completed until the end of studies.

Commentary

The Committee recognized the problems inherent in the current situation and agreed with SGI's recommendation that the family enterprise benefit should be an income replacement benefit, consistent with the replacement worker benefit for self-employed injured persons. The Committee also agreed that this benefit should be paid until the injured person is recovered or is entitled to an income replacement benefit.

Implications

Legislation and Regulations

Legislative change will be required to implement this recommendation.

Cost

SGI has indicated that the financial impact of this change will be minimal.

Income Replacement Benefit for Students and Youth

Recommendation

That the income replacement benefit for students and youth be based on minimum wage for those who are unable to work at the end of elementary or secondary level studies or age 16, except for those catastrophically injured.

That for catastrophically injured students or youth, and for those studying at the post-secondary level, the benefit be the industrial average wage at the end of studies or age 16.

That a tort action be allowed for actual and potential income loss.

Current Situation

Sections 121 and 126 provide that students or youths who cannot attend school or work are entitled to an income replacement benefit based on the Industrial Average Wage at the end of current studies for students or at the age of 16 for youths.

Commentary

In the case of temporary injuries, the current income replacement benefit for students and youth is inappropriately high, and is therefore a potential barrier to recovery. However, the benefit may be inadequate for post-secondary students. SGI recommended to the Committee that these provisions be changed to address these issues, and the Committee agreed that a change would be appropriate.

Implications

Legislation and Regulations

A legislative change is required to implement this recommendation.

Cost

SGI's actuary has estimated that the cost of implementing the recommendation (excluding the impact of the tort actions) would be a decrease of $142,000 annually. The Review Committee's actuary estimates that the cost of the tort action recommendation would be an increase of $355,172 annually. Therefore, the net cost of implementing this recommendation will be an increase of $213,172 annually.

Caregiver Benefits

The Committee considered a number of issues related to the current provisions for "caregivers", described in Section 159 of The Automobile Accident Insurance Act as those injured persons whose main occupation at the time of an accident was taking care, without remuneration, of persons who:

(a) are under 16 years of age; or
(b) are regularly unable to hold any employment".

The "weekly benefit for the care of others" in Section 159 is more generous than those in almost any other no-fault plan. The benefit can be viewed as the Personal Injury Protection Plan's equivalent of the head of damages for "loss of homemaking capacity" recoverable in tort actions as part of the general topic of "loss of working capacity". In a tort action, these damages sometimes substitute for loss of "earnings", but they may often be payable in addition to loss of earnings where an injured person was caring for children as well as earning an income outside the home. The Saskatchewan Court of Appeal in *Fobel v. Dean* (1989) was the first appeal court in Canada to give the loss its proper recognition, and the case has been followed across Canada. The increase in damages awards attributable to this claim led to an increase in premiums, and is considered by some to be one of the reasons why the Personal Injury Protection Plan was implemented in 1995.

The Personal Injury Protection Plan's approach to loss of homemaking capacity is to award sums of money under the caregiver benefit which will provide the injured person with resources so that the person who takes over the homemaking tasks can be paid. The "capacity" is therefore assessed by an evidence-based approach which is practical and affordable.

In tort actions, "homemaking" loss covers the full range of tasks that would have been undertaken by a person in the management and running of a home. It refers to functions that were performed *for others*, particularly for children, but also for spouses. The tasks for which damages can be awarded to an injured person are assessed at their replacement cost, which in extreme cases may involve the cost of hiring a "substitute homemaker". The range of tasks covered includes everything from cooking, vacuuming and cleaning, to bookkeeping, tutoring, chauffeuring and fixing up the home.

The Personal Injury Protection Plan also provides a benefit in Section 158 for "expenses for personal assistance", which is primarily for expenses incurred for the care of the injured person, rather than for others, although the expenses claimed here may overlap with those under the caregiving benefit.

Income and Work Replacement Benefit for Caregivers

Recommendations

That the caregiver benefit be moved into the income replacement benefit division of the Act.

That for the for the first 180 days, the schedule of payments for caregiving be retained, and that an injured person who remains fully incapacitated from caregiving during that period be entitled to the amount in the schedule without proving actual expenses.

That for the first 180 days, where the caregiver has a reduced caregiving role either because the number of persons cared for is reduced, or because children are older, or for any other reason, the caregiving benefit be reduced accordingly.

That after 180 days, caregiver benefits be paid according to the greater of (a) actual and reasonable expenses, within limits or (b) the minimum wage.

That the legislation make clear that injured persons who at the time of the accident worked outside the home and were also responsible for caregiving tasks should have access to both caregiver benefits and income replacement benefits. That the benefits for caregiving be calculated based respectively on the number of persons cared for and the tasks the injured person performed before the accident.

Current Situation

Non-earners and part-time earners whose main occupation at the time of the accident was caring for others can receive a "weekly benefit for the care of others" under Section 159 of **The Automobile Accident Insurance Act**. This is to compensate for the loss of the ability of the injured person to work for the benefit of children and others for whom care from the injured person is necessary. It provides resources for the injured person to pay those who voluntarily undertake the work she or he would have done or to hire a person to do the work. The benefit is sometimes available in addition to an income replacement benefit, depending on the circumstances.

The caregiver benefit amounts vary with the number of persons cared for. They are:

- $325 if 1 person is cared for;
- $352 if 2 persons are cared for;
- $379 if 3 persons are cared for; and,
- $433 if 4 or more persons are cared for.

In a situation of four or more persons being cared for, the amount of this benefit is over $22,500 per year.

The caregiving benefit is currently treated as an "expense" and is therefore subject to the maximum amount for expenses provided for under the Personal Injury Protection Plan.

There are provisions for a reduction of the caregiving benefit due to a variation in the number of persons being cared for and where the non-earner is able to resume the caregiving role. There are also provisions for an injured person to claim an income replacement benefit for part-time work outside the home, although the current legislative provisions are unclear and may lead to over- or under-compensation.

Commentary

The "weekly benefit for the care of others" in Section 159 of **The Automobile Accident Insurance Act** are more generous than those in almost any other no-fault plan. Although in some circumstances they may over-compensate an injured person, studies show that figures of this amount do not generally overestimate the value of caregiving services that an injured caregiver would normally perform. Nevertheless the schedule of benefits is a very rigid method of assessment, and a more precise assessment should be attempted in long-term cases.

It was the view of the Committee that the benefit should be designed to help injured persons with a broad range of functions concerning the caregiving and homemaking. However, where the injured person had been doing tasks solely for a spouse or significant other, with no dependents, which is recognized as an "inter-dependency" rather than a "dependency" relationship, there would be considerations that off-set the loss of the injured person's ability to work. As well, the benefit for expenses for the injured person himself or herself would often provide a side-benefit for a spouse or significant other. The Committee therefore concluded that there should therefore be no general benefit for loss of "capacity" in addition to the benefits covered by Section 159. The Committee felt that the caregiving and homecare benefits adequately compensated "loss of capacity".

The current provisions in Section 159 are not satisfactory in a number of respects, both by way of possible over-compensation and under-compensation. In practice, SGI attempts to make sure that the full loss is covered in addition to the income the caregiver would have earned outside the home. However, the legislation is unclear, and there are elements where the benefit is insufficient to cover losses. The Committee gave consideration to the following:

- The caregiving benefit is treated as an expense and is therefore subject to the overall limitation on the claim for expenses under Section 110(3);
- Proof of loss of caregiving capacity is difficult, and a presumption of the extent of the loss may be necessary;
- No provision is made for a reduced benefit where the caregiving responsibilities diminish due to the age of children (other than the legislative provision for termination of benefits for caregiving of children after they reach age 16);
- Overcompensation may result if a fixed schedule of benefits is used for the long-term;
- The provisions for claiming the benefit where the injured person was caregiving as well as earning income are unclear and may be inadequate;
- No provision is made for loss of caregiving benefit as well as income replacement benefit where the injured person would have taken a part-time job after an initial period of full-time caregiving.

The Committee also considered the fact that the majority of caregivers are women, so the argument could be made that provisions which under-compensate caregivers discriminate against women.

Moving the Caregiver Benefit to Income Replacement

The Review Committee agreed that the caregiver benefit should be moved to the category of "income replacement" because the benefit is for loss of the injured person's ability to work and is comparable to the loss of the ability of an earner to work for income. Both losses are losses of the product of work – one in the form of earnings and the other in the performance of tasks of monetary value – and they should therefore be treated in a comparable way. The result of this is that the caregiver benefit would not be taken into consideration in the determination of the maximum expenses claimable under Section 110(3).

Using the Schedule for the first 180 Days after the Accident

Loss of the capacity to do tasks of caregiving and homemaking is more difficult to prove than loss of earnings. The tasks are varied and occur in intermittent and irregular patterns, and they vary enormously in terms of their market or replacement value. However, statistics reveal that the amount of caregiving done is relative to the number of persons requiring care. Statistics also show that the average market value or replacement cost is quite high. The Committee agreed that the amounts that are provided for in Section 159(3) are reasonable in light of these considerations. If a caregiver is fully incapacitated from giving care the defined benefit will provide fair compensation. The caregiver can then either hire a substitute person to perform the tasks or pay those members of the family who have taken over the function.

The fixed figures appear appropriate for the short term while temporary arrangements have to be put in place. Although the Committee agrees with SGI that payment of caregiving expenses should in the long-term be made on the basis of "actual and reasonable expenses", it does not recommend that this basis be used immediately after the accident. It is difficult to expect an injured person to obtain receipts from friends or family following an automobile accident. A tort action estimates the value of the work that would have been done as the measure of the loss, and does not require the presentation of receipts. If family and friends contribute to running the household following an accident, the injured person should be given resources to pay back those who did the extra work. Where there is complete incapacity, the insurer should not require receipts in the initial period after an accident, at least not unless the injured person begins to be able to perform some of the work.

Adjustment of Benefit for Reduced Role

The payment of a fixed sum for caregiving can involve over-compensation. There should therefore continue to be a reduction of the benefit where an injured person is capable of performing some of the functions without much difficulty, as is now provided for in Section 159(6). However, there should also be a reduction where children have grown older and more self-reliant, or where other persons who were being cared for at the time of the accident have become more capable of looking after themselves. It should be noted, however, that for older children the caregiving or homemaking role may involve diverse tasks for which replacement may be needed, such as the chauffeuring of young people to sports and recreational activities.

Actual and Reasonable Expenses or Minimum Wage after 180 Days

In cases of long-term injury, a fixed schedule as is now provided in Section 159(3) is problematic. In most cases, there will be some recovery form the injuries within the first 180 days, and the scheduled figure will have been subject to a reduction for the value of tasks that the injured person can perform. As a result, an assessment will be made for those tasks remaining which the injured person still cannot perform. Therefore, after 180 days, the Committee considered it appropriate that the loss should be evaluated on an evidence-based approach.

This can be done by making the benefit payable for "actual and reasonable expenses", as SGI recommended to the Committee. It should be possible after 180 days for the injured person and her or his family to fix arrangements for substitute work, and for that work to be paid for at a reasonable rate of remuneration. This can be done by the hiring of one or more persons to come in and do the work, or by the payment of an agreed equivalent sum to friends or family. The benefit may turn out to be greater or less than the scheduled sum, depending on the circumstances of the case.

Benefit for Persons who Work Outside the Home

The legislation is unclear with respect to situations where the injured person was earning as well as caregiving and/or homemaking without remuneration. The legislation should be clarified to ensure that those persons who work outside the home and are responsible for homemaking and/or caregiving have access to applicable benefits. Whatever interpretation is given to the legislation, it is not currently sufficiently flexible to cover the range of situations which may be encountered.

Income Replacement Benefit where Probability of Employment

The Committee also considered that there ought to be provision for the situation where the caregiver would likely have returned to part-time employment after an initial period of full-time caregiving, even though she or he was not earning at the time of the accident. For the first 180 days it seems appropriate that the benefits be based on the situation at the time of the accident. However, if the injured person can show the probability that she or he would have returned to paid employment on a part-time or full-time basis during the first 180 days after the accident, the injured person ought to be able to elect for an appropriate income replacement benefit as well as a caregiver benefit

After 180 days, the injured person's longer-term position ought to be assessed on the basis of the possibility or probability that she or he would have returned to work part-time or full-time. Statistics are available to assist in such a determination, and there may be evidence which shows the clear possibility of the injured person's life plan.

In the case of injured persons who were caregivers, the two-year window of pre-accident earnings should not be used as the basis for assessment. Instead, a separate assessment of the potential of the injured person for employment based on experience and ability should be made, such as was previously done in limited circumstances under Section 113. The earnings experience of the two years prior to the accident may not be a good guide with respect to long-term income loss and may therefore under-compensate the injured person. A different method of assessment should be used for those differently situated, such as caregivers.

The Committee recommends the assessment of long term caregiving benefits should be based on actual and reasonable expenses. As children grow older, the caregiving function diminishes, and in some cases the caregiver may return to part-time or full-time employment.

Implications

Legislation and Regulations

Legislative change will be required to implement this recommendation.

Cost

SGI's actuary has indicated that the movement of caregiver benefits to the income replacement category will result in a cost increase of an estimated $483,000 annually by:

- Moving the caregiving benefit to an income replacement benefit;
- Allowing reversion to an income replacement benefit when the injured person no longer cares for others; and,
- Reducing the benefit for residual earning capacity.

The other changes recommended will involve a reduction in costs at some points and an increase at others, with a net change of a minimal increase in costs.

Other Issues

The Committee considered a number of other issues related to benefits provided by the Personal Injury Protection Plan.

Death Benefit Payments for Low- or Non-Earners with Dependants

Recommendation

That in calculating the death benefit for low- and non-earners with dependants, a death benefit be paid for each dependant based on minimum wage and the age of the dependant and comparable to the federal government's child support guidelines.

Current Situation

Section 146 of **The Automobile Accident Insurance Act** provides that the surviving spouse of a person killed in a crash receive a death benefit but no death benefit is payable for dependants.

Commentary

In some situations, the current death benefit may not adequately cover the economic impact of the surviving spouse's loss. This would be especially likely in the case of a non-earner with dependants.

The Committee agreed with SGI's recommendation that this deficiency be addressed by paying a death benefit for each dependant. However, the Committee considered that the benefit should be in line with the federal government' child support guidelines.

Implications

Legislation and Regulations

Legislative change will be required to implement this recommendation.

Cost

SGI's actuary has indicated that this benefit change would result in an increased cost of an estimated $363,000 annually.

Benefit for Financial Counselling

Recommendation

That a benefit be included for financial counselling, to a limit of $500, for anyone receiving a significant lump sum benefit, or anyone receiving a long-term income.

Current Situation

In a number of situations, injured persons or survivors may be entitled to benefit amounts and alternatives that can be overwhelming to deal with. Currently, the Personal Injury Protection Plan has no benefit for financial counselling assistance to provide independent advice to these individuals.

Commentary

In the case of death, a lump sum may be offered to the spouse of the deceased as an alternative to bi-weekly payments. The spouse may find it difficult to determine which option to choose, to deal with a lump sum, and to understand the tax implications.

In the case of a severe injury, a significant lump sum is provided as compensation for permanent impairment. The injured person, particularly if brain injured, may be unsure of how to deal with the benefit.

In the case of young people receiving a significant income – such as a catastrophically injured youth at age 16 who will receive an income based on the Industrial Average Wage – the size of the benefit amount may be overwhelming.

The Committee agreed with SGI's recommendation that this issue be addressed through the addition of a new regulation providing for financial counselling assistance. However, the Committee determined that the benefit should not be restricted to those under the age of 21.

Implications

Legislation and Regulations

No legislative change is required to implement this recommendation, but this new benefit would require a new regulation in **The Personal Injury Benefits Regulations**.

Cost

SGI has estimated that this new benefit will involve a minimal increase in costs.

Alternative/Complementary Health Care Therapies and Treatments

Recommendation

That SGI continue to be sensitive to changes in health care with respect to alternative/complementary therapies and treatments for injured persons.

Current Situation

Currently, benefits for health care therapies and treatments for injured persons are provided for in **The Automobile Accident Insurance Act** as follows:

- Section 110 provides for the injured person to receive rehabilitation benefits, including *"all measures, programs and treatments that the insurer considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen the victim's disability caused by the accident and to facilitate the victim's recovery from the accident"*.
- Section 163 provides for the injured person to receive reimbursement of expenses for medical and paramedical care, including transportation and lodging for the purpose of receiving the care.

In interpreting these provisions as it implements the Personal Injury Protection Plan, SGI necessarily takes into account advances in health care therapies and treatments. The corporation also acts on the advice of health care practitioners, particularly the physicians, chiropractors, and physiotherapists playing a primary caregiver role.

Commentary

The Committee heard from a number of injured persons who incurred expenses for alternative/complementary health care therapies that were not subsequently reimbursed by SGI. These individuals indicated that they should have the right to choose the therapies they felt would benefit them.

The Committee recognized the importance of individuals making personal choices for therapies to help them with their injuries. The Committee also recognized that health care choices available to people are continuously expanding, including more and more that are demonstrating rehabilitative value. Some injured persons indicated to the Committee that SGI had been quite flexible in covering alternative therapies, and the corporation itself has indicated that it is open to alternatives where they appear to be appropriate.

The Committee concluded that the use of alternative health care therapies will need to be considered as situations arise, with Personal Injury Representatives making judgements in consultation with advisors and with sensitivity to the particular needs of the injured person.

Implications

Legislation and Regulations

No change to legislation is required. SGI can implement this through policy interpretation of the existing legislation. No change to regulations is required.

Cost

Financial implications of implementing this recommendation will depend on the extent of SGI's coverage of alternative/complementary therapies, but on an annual basis should be minimal.

Top-up of Benefits Available Under First Payer Compensation Plans

Recommendation

That SGI top up any benefits available under first payer compensation plans that are not as generous as the Personal Injury Protection Plan.

Current Situation

Currently, injured persons may be subject to first payer compensation plans and may therefore not receive the level of benefits they would be entitled to under the Personal Injury Protection Plan.

Commentary

The Committee considered the first-payer issue, noting the general intent of the Personal Injury Protection Plan to provide benefits to anyone injured in a motor vehicle crash. When this does not happen because SGI is not the first-payer, an injured person faces three problems:

- The likelihood of receiving a lower dollar value of benefits than he or she would receive under the Personal Injury Protection Plan;
- The likelihood of facing a more rigorous adjudication process and potential delays in access to treatment;
- Confusion respecting the responsibility for benefits (i.e., a car crash should mean SGI involvement).

While the Committee did not agree that SGI should become the first-payer in all situations, we did agree that a person injured in a crash should receive benefits equivalent to those provided under the Personal Injury Protection Plan. Accordingly, we agreed that SGI should top up these benefits, whether they be provided by the Workers' Compensation Board, the federal government, or another agency.

The Committee recognized that problems could arise with injured persons whose treatment programs are directed by other agencies, but considered that SGI should endeavour to overcome these problems.

Implications

Legislation and Regulations

Legislative change will be required to implement this recommendation.

Cost

SGI's actuary has indicated that this change will result in a cost increase of an estimated $193,000 annually.

Student and Youth Definitions

Recommendation

That the definition of student and youth be changed so that "youth" includes those children under age 16 who do not attend school; and, "student" and "youth" include a minimum school attendance of 60% and a full-time course load (as defined by the educational institution and recognizing the individual's course load capacity).

Current Situation

The Automobile Accident Insurance Act includes the following definitions in Section 100:

- A "student" is a person who, at the time of the accident, is at least 16 years of age and who attends a secondary or post-secondary educational institution on a full-time basis;
- A "youth" is a person who, at the time of the accident, is under 16 years of age and who attends an educational institution on a full-time basis; and,
- A student or youth is considered to be attending an educational institution on a full-time basis from the day that the student is admitted by the institution as a full-time student in a program of that level until the day the student completes, abandons, or is expelled from his or her current studies or no longer meets the requirements of the institution.

Commentary

The Committee was informed by SGI that the student and youth sections require clarification, and agreed with changes proposed by SGI to deal with the following issues:

- Currently, the definitions do not consider children who are under age 16 and not attending school; and,
- The legislation does not state that students must attend school regularly to be eligible for the loss of studies benefit.

Implications

Legislation and Regulations

Legislative change is necessary to implement this recommendation.

Cost

SGI has estimated that this change will have minimal financial impact.

SGI Recommendations Generally Supported by the Committee

As indicated in the introduction to this chapter, the Review Committee was in general agreement with many of the recommendations made by SGI in its submission to the Committee. The following listing indicates the specific recommendations that the Committee supports.

SGI Number	Recommendation Description
4	Allow payment for reasonable and actual telephone and television expenses while in a treatment facility.
5	Define relapse to include only crash-related injuries.
9	Allow for payment of a partial loss of studies benefit when part of a semester is missed.
16	Clarify the seven-day waiting period for the replacement worker benefit; pay employer CPP and EI premiums directly to Revenue Canada when there is proof of payment; allow for a replacement worker for each job that an injured person holds.
17	Include as a benefit a lump sum payment for any actual scholarship income lost due to an injury.
18	Pay for any non-refundable book and tuition expenses for all students, including part-time students (formal education only; not recreational).
20	Pay an income replacement benefit for time taken to attend medical appointments during work hours.
21	Increase the income replacement reduction percentage for persons returning to work to 90% of net income received, reducing the additional income received by the injured person, but leaving some incentive to return to work part time.
23	If the deceased held employment in the prior year and had displayed an intention to hold employment, allow the death benefit calculation to be based on an annual income from previous employment. If the deceased was on a formal leave from employment, pay a death benefit based on the last annual income earned.
24	Pay $10,836 to each non-dependant legal parent or child of the deceased. Pay to a maximum of $48,764 (to be distributed equally amongst the survivors) in the case of five or more non-dependant legal parents or children. In the absence of any parent or child, pay the minimum $10,836 to the estate.
25	Increase the funeral expense benefit to $7,500 and allow excess costs to be recovered by the estate of any deceased person not at fault for the crash.
26	Pay the dependant death benefit for the child of a deceased regardless of proof of dependency; pay for a fetus once the child is born.

SGI Number	Recommendation Description
27	Add a "separation" clause specifying that a spouse (including a common-law spouse) loses the right to benefits when there has been a separation of one year or longer and there are no alimony payments or dependent children. Change the wording to eliminate possible claims by those who previously cohabited with the deceased.
29	Provide a vocational counselling benefit for dependent spouses of deceased persons, to a limit of $500.
30	Provide benefits for grief counselling from a professional counsellor for immediate family members of a deceased person, to a limit of $1,000 per claim
32	If the guardian is not the spouse, pay the dependant death benefit for the children to the Public Trustee. The Public Trustee should be specifically directed to use the funds to pay for the maintenance of the children.
33	Change the definition of dependant to include those mentally or physically disabled over age 21, and pay a dependant death benefit to those dependants over age 21 for life or until no longer disabled.

SGI has indicated to the Committee that the financial implication of these recommendations together is an estimated $1.6 million annual increase in costs.

Chapter 4 — **Process**

In reviewing the Personal Injury Protection Plan, the Committee looked at the provisions of the legislation and how they are applied by SGI. In considering the application of the legislation, we needed to look at how the Plan is administered. This required a review of two aspects: the ***processes*** used by SGI and the delivery of ***service*** by the corporation. In this chapter, we provide our findings related to the process components of the Personal Injury Protection Plan.

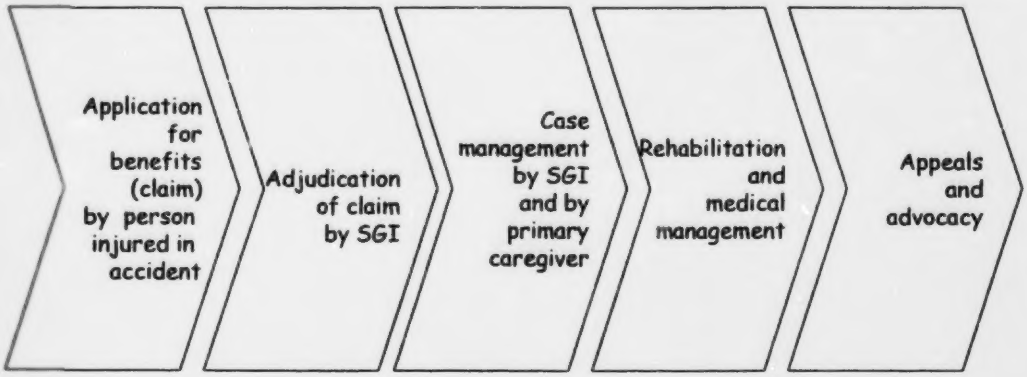
The processes that support the Personal Injury Protection Plan are fundamental to its operation and its impact. The Committee identified a number of issues related to process and sought to understand how they might be addressed. We looked at the basic information available from SGI on its processes and supplemented this with information from people who interact with the Plan to either receive or provide services.

The Committee looked at process from the perspective of two primary themes: (1) a streamlined continuum of discrete processes, and (2) the underlying integrity of the service delivery system. These themes capture the two key messages for effective process: individual processes that connect as seamlessly as possible, and a support system for those processes that applies resources appropriately.

A Streamlined Continuum of Discrete Processes

Although the Personal Injury Protection Plan encompasses a multitude of specific processes, we looked at the Plan as involving five that are central to its operation:

- Application for benefits;
- Adjudication;
- Case management;
- Rehabilitation and medical management; and,
- Appeals and advocacy.


Application for benefits (claim) by person injured in accident
Adjudication of claim by SGI
Case management by SGI and by primary caregiver
Rehabilitation and medical management
Appeals and advocacy

For each of these five primary processes, we have looked at a range of issues and formed conclusions and recommendations.

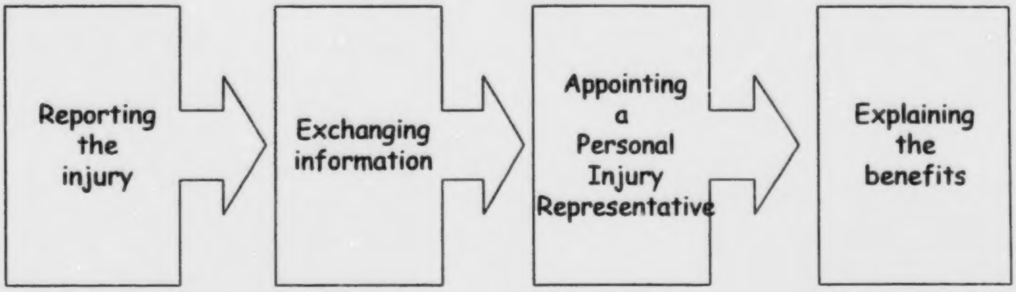
Application for benefits

Recommendation

That SGI continue to improve the initial process of applying for benefits, ensuring the provision of information and advice to the injured person quickly and clearly.

Current Situation

When a person is injured in a motor vehicle accident, the following steps are involved:



Step 1 – Reporting the injury

The first step in the process of applying for benefits occurs when automobile damage is reported to an Automobile Claims Adjuster. At that time, the adjuster is to ask if there were any injuries as a result of the crash. If the answer is "yes", the injured person will be asked to report the injury.

In cases of serious injuries involving hospitalization, a different first step is involved. In such a situation, a social worker will inform SGI of the injury and SGI will subsequently make arrangements to see the injured person at the hospital or later in his or her home.

When very serious injury cases are involved, SGI Injury Specialists work with relevant service providers (e.g., Acquired Brain Injury Outreach Teams, Saskatchewan Abilities Council, etc.) to develop rehabilitation plans.

In cases where the injured person is not able to initiate the claim, a relative, guardian, lawyer, executor, or an administrator may act on his or her behalf.

Step 2 – Exchanging information

Once an injury has been reported, SGI staff obtain relevant information on the injured person's health status and its impact on his or her ability to work and carry out the activities of daily living. The first contact person from SGI that an injured person speaks with will ask or look for answers to four questions:

- Were you injured in the accident?
- What were the injuries?
- Will you require ongoing medical treatments?
- Do you have any out-of-pocket expenses?

The first two questions are to help the SGI contact person determine the presence of an injury and its severity, but this will not necessarily mean that the individual will have a compensable claim. If the answer to either of the last two questions is affirmative, this should be a clear indication that some form of reimbursement will be required, and the contact person should therefore arrange for an injury claim file to be opened.

The contact person is also to advise the injured person that a report must be made to the police in order for the claim to move forward.

The individual is provided with an information package that includes an Application for Benefits, the **Guide to Personal Injury Protection**, and a letter outlining basic processes and information. This material is mailed to the individual or it can be picked up at an SGI claims centre.

The Application for Benefits comes in two versions:

- Minor claims involving ambulance account, prescriptions, eye glasses or clothing expenses require the "short form" application and are to be completed by the Personal Injury Representative (Personal Injury Representative), who will ask the injured person to substantiate his or her expenses.
- All other injury claims require use of the "long form", which must be completed and signed by the injured person, parent, or guardian.

If any compensation is due under the Personal Injury Protection Plan, an injury claim file must be opened by SGI before any payment can be made to the injured person.

Step 3 – Appointing a Personal Injury Representative

A Personal Injury Representative is assigned responsibility for the injury claim file and receives the information provided by the injured person in the initial contact with SGI.

Step 4 – Explaining the benefits

The Personal Injury Representative either calls or meets with the injured person to explain the benefits the injured person is entitled to receive, the processes involved in filing an injury claim, and any rehabilitation programs available that might assist the injured person. The SGI manual indicates "it is expected that the adjuster will be meeting with the victim or victim's representative" in order to assist in the completion of the Application for Benefits.

Commentary

The Committee found that this front-end process of the Personal Injury Protection Plan was not well-developed at the outset in January of 1995, and that as a result, claimants encountered a number of problems in the early years of the Plan:

- Initial information on benefits available and the process to be followed was in some instances not provided substantively and consistently to injured persons; as a result, some injured persons were not fully aware of what they were entitled to and how to go about ensuring that they received benefits.
- Personal Injury Representatives were sometimes viewed as being inadequately sensitive, responsive and informative in their dealings with injured persons; as a result, some injured persons felt that they had not been treated with appropriate compassion and respect and were not helped as they believed they should have been by the Personal Injury Representatives.

- The general public was not fully aware of the meaning of "no fault" insurance and how it was to be applied in the case of personal injury; as a result, some injured persons did not necessarily make a claim on a timely basis or they entered the process with unrealistic expectations.
- The original **Application for Benefits** form was long and complex and asked for information that was to be used for research purposes; as a result, some injured persons were overwhelmed and/or offended by the task of providing detailed information.

Many of the concerns brought to the Review Committee by injured persons, notably those who applied for benefits in the first two years of the Personal Injury Protection Plan, involved issues of information and communication during the initial period of the claim. The Committee heard of a number of situations where individuals were not made fully aware of the benefits available to them, either verbally or through written material.

It became evident during the review work that over the years, SGI has improved the application for benefits process significantly, particularly in the areas of written materials and greater knowledge and experience of Personal Injury Representatives. **The Guide to Personal Injury Protection** introduced in 1998 is now required to be provided to claimants as a matter of course once they have reported their injury. The guide is a clear and informative explanation of the benefits that an injured person may be entitled to and the processes involved. The current **Personal Injury Protection** guide for Personal Injury Representatives is also a substantial improvement over the previous operational framework, which was not well documented.

The performance of Personal Injury Representatives has also improved from the early days of the program. With additional experience and training, this pivotal role has evolved substantially and SGI is now doing a much better job of making sure the application process and front-end communications work better for the injured person.

SGI is also reworking the original application form to simplify it and remove/clarify points that caused concern. For example, the new form does not ask for information on combined total family household income or details on health problems over the six months previous to the accident. Also, the information on work and income history is asked for in a separate application form for loss of studies or income replacement benefits. The new form also excludes an authorization for SGI to share information with the Institute for Health and Outcomes Research at the University of Saskatchewan.

The Committee concluded that while the process of applying for benefits was potentially problematic in the early period of the Personal Injury Protection Plan, the Plan has now evolved to a much improved state, notably:

- The standard distribution and use of the **Guide to Personal Injury Protection**;
- The standard turnaround time in contact with injured persons to initiate the first steps of the claim process; and,
- The revision of the application form.

The Committee also concluded that this part of the Plan's overall process is of critical importance. It sets the scene for both the injured person and the insurer, offering the opportunity to define expectations and goals, to share relevant information fully, and to establish a good working relationship.

Implications

Legislation and Regulations

No change in legislation or regulations is necessary to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

> **"The Committee found that this front-end process of the Personal Injury Protection Plan was not well-developed at the outset in January of 1995, and that as a result, claimants encountered a number of problems in the early years of the Plan ... SGI has improved the application for benefits process significantly, particularly in the areas of written materials and greater knowledge and experience of Personal Injury Representatives."**

Adjudication

Recommendation

That SGI be more systematic in following the established steps of the adjudication process, but without imposing delays that would be inconsistent with the rehabilitation focus of the Plan.

Adjudication of the claim is the second major process of the Personal Injury Protection Plan, and involves the function of determining whether or not benefits are payable to the injured person:

Adjudication Steps:
Determine whether the claimant and/or the accident are covered by the Personal Injury Protection Plan.
Determine whether the injuries claimed are related to the accident.
Determine what services and benefits the claimant can receive under the scheme.

The Committee decided that to review this process, external assistance would be valuable. Accordingly, the Committee engaged William M. Mercer Limited (Mercer) to evaluate SGI's adjudicative performance as part of a larger review of the corporation's rehabilitative case management performance. The Mercer review was based on examination of 101 injury claim files and is described more fully in the following section on case management.

Current Situation

The process followed by Personal Injury Representatives in determining benefits is built on the historical experience of SGI in the adjudication of claims. However, this historical approach to adjudication was modified substantially with the introduction of the "no-fault" rehabilitation focus in 1995. In preparing for the new Personal Injury Protection Plan, the Personal Injury Representatives were expected to adopt a "we pay" approach in dealing with injury claims.

In order to be entitled to benefits, an injured person must establish that:

- An accident occurred;
- The accident caused an injury;
- The injury caused the incurring of an expense, an inability to hold employment or to care for others, permanent impairment, or death; and,
- The result of the injury is compensable under the Plan.

Only an accredited health care practitioner (physician, chiropractor, or dentist) can certify that a relationship exists between an accident and an injury, or between an injury and a disability.

As noted by Mercer in its report to the Committee:

> *"Adjudication is the decision-making element of case management. The adjudication function requires the Personal Injury Representative to make decisions about services and benefits claimed by claimants and their health care and vocational rehabilitation providers.*
>
> *Both the claimant's eligibility for the service/benefit, and entitlement to the service/benefit need to be addressed."*

Commentary

The Committee noted that the steps for adjudication are clearly defined and that Personal Injury Representatives have an established framework within which to do this part of their work.

With respect to the actual practice of adjudication, the Committee was not made aware of any particular concerns on the part of injured persons, health care providers, advocacy groups, or Personal Injury Representatives. However, the review conducted by William M. Mercer Ltd. looked at the issue of adjudication and reported that adjudication practice is not consistent with either (a) the established framework for the Personal Injury Protection Plan or (b) standard insurance industry practice in adjudication.

The Committee took note of Mercer's observations:

- *"… disability insurers and workers' compensation authorities … typically do not manage claims until the issues of eligibility and threshold entitlement have been adjudicated. There is an underlying acknowledgement that their liability and authority do not exist until it has been determined that the claimant is eligible to make a claim.*
- *The PIPP claim files were remarkable for the extent to which entitlement decisions were demanded of Personal Injury Representatives (by claimants and health providers) before eligibility and other threshold issues could be determined.*
- *In the great majority of cases, health care service approval requests in particular are received very early in the life of the claim and must be handled expeditiously.*
- *There appears to be a general belief in the population that 'no fault' means 'automatic entitlement'. Both claimants and providers on occasion expressed displeasure that a Personal Injury Representative would authorize treatment conditional on the claim being accepted.*
- *The Personal Injury Representatives themselves seem to subscribe to this no fault = entitlement belief, and little attention is paid to the first two steps in adjudication. There seems, in fact, to be more focus on ensuring appropriate paperwork is provided by the claimant ('proof of claim') than on ensuring the compensability of the claimed injury/disability. Indemnity is almost automatic for health care services.*
- *Similarly, delays in payment of Income Replacement Benefits (IRB) are most commonly related to obtaining information to permit calculation rather than to enquiry into whether the work/school absence is accident-related or* medically required."

With the approach taken by the Personal Injury Representatives, adjudication is not being done effectively. For example, a person may be injured and require treatment for the injury, but may not be disabled by the injury to the point where it affects his or her ability to work or attend school. This is an extremely important point to clarify early in the claims process.

The Automobile Accident Insurance Act defines disability by stating that a person is disabled if *"…bodily injuries render the insured entirely incapable of engaging for wages or profit in any occupation or employment for which the insured is suited having regard to his skill and ability …"*

To determine whether or not an injury does, in fact, constitute a disability, the Personal Injury Representatives are expected to use SGI's *Physical Job Analysis Sheet.* This form is to be completed by the employee's immediate supervisor, and describes the specific functions of the employee's job. Most group disability insurers use this type of tool to assist in adjudicating the extent of disability for income replacement purposes. In the 50 claim files Mercer reviewed in which an income replacement benefit was paid, only nine included the forms.

The Committee noted carefully the results of Mercer's review, and agreed that SGI should look at its Personal Injury Representative adjudication practices to ensure that they are in line with appropriate standards. In particular, the Committee noted the importance of making use of the *Physical Job Analysis Sheet* tool to obtain important information early on.

However, the Committee cautions against SGI shifting its receptive approach to impose delays in the process of making adjudicative decisions. Restrictions in access to health care providers early in the process would be counter to the rehabilitation and early intervention focus of the Personal Injury Protection Plan.

Implications

Legislation and Regulations

No change in legislation or regulations is necessary to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

> **"There appears to be a general belief in the population that 'no fault' means 'automatic entitlement'. Both claimants and providers on occasion expressed displeasure that a Personal Injury Representative would authorize treatment conditional on the claim being accepted."**
>
> **— Mercer Report**

Case Management

Recommendation

That SGI enhance its case management practices, building on the findings from the Mercer review. The Committee also recommends that the roles and responsibilities of the case management team be clarified and communicated based on the following elements:

(1) the Personal Injury Representative as the primary case management coordinator for the injured person, including being proactive in coordinating and cooperating with the primary caregivers;

(2) the primary caregiver as the health care case manager, coordinating and cooperating with other health care providers and communicating with the injured person and SGI; and

(3) the vocational rehabilitation consultant as the return to work or activities of daily living case manager, coordinating with the injured person, SGI, the employer, and others as required to assist the injured person.

Case management is necessarily a central feature of injury claims from three perspectives:

- For the insurer, management of the claim file and ensuring due process through the course of determining and providing benefits and helping the injured person through the rehabilitation process. In the words of Mercer,

  > *"Case Management is the identification, authorization, monitoring, and coordination of benefit payments, goods and services to a disabled person to ensure an early return to work (RTW) and/or the maximum medical improvement."*

- For the health care provider, management of the rehabilitation process for the injured person, ensuring that the right services are provided at the right time and to the degree necessary to help the injured person recover from their injuries to the extent possible.
- For the injured person, effective case management should mean he or she is aware of all relevant activities and progress and knows who is coordinating the various aspects of the claim and rehabilitation process.

The Committee looked at issues related to all three aspects of case management. As noted earlier, the Committee engaged William M. Mercer Limited (Mercer) to conduct a review of SGI's rehabilitation case management performance.

Health care provider case management performance presented the Committee with a more complex challenge, and we considered advice from a number of sources in the health care community on this issue. We discuss case management in the health care context in the next section (rehabilitation and medical management).

Injured persons provided the Committee with descriptions of specific case management experiences, particularly related to effective coordination of care and communication of progress and decisions.

Current Situation

The Personal Injury Representative acts as a case manager, working with the injured person and his or her health care providers to approve, coordinate, and monitor the payment of benefits and the provision of rehabilitation services.

SGI's internal **Personal Injury Protection** guide for the Personal Injury Representative has a chapter on case management, focusing on early intervention and close monitoring of the injured person's recovery. The features of case management discussed in the guide include risk factors (termed as "red flags"), the alternatives involved in a return to work, and the management of claim files through:

- The initial interview;
- Assessment of liability;
- Payment of income replacement benefit;
- Medical reports;
- Detailed employment investigation;
- Detailed medical investigation;
- The role of health care consultants;
- Independent medical examinations;
- Independent investigations/surveillance; and,
- Major loss.

The Committee also considered the description of four case management functions provided by Mercer: identification, authorization, monitoring and coordination.

Identification:

- In medical rehabilitation, the treating practitioner is usually the one who identifies whether or not an injured person requires medical rehabilitation.
- In vocational rehabilitation, the Personal Injury Representative usually identifies if a claimant requires assistance to return to work (RTW) or to return to pre-accident activities.

Authorization:

- In medical rehabilitation, authorization for medical services is not very clear-cut. Physiotherapists usually inform the Personal Injury Representative by fax that treatment is occurring in order to receive payment. Physicians, who are paid by the Saskatchewan public health system, need not inform SGI about treatment until they send in the Practitioner's Report. Although the authorization for medical services should technically be a case management function, in this scenario, it initially rests with the treating practitioner.
- In vocational rehabilitation, the Personal Injury Representative personally conducts vocational planning and other activities, or delegates it to a vocational rehabilitation consultant (VRC). Authorization in vocational rehabilitation is more clearly the responsibility of the Personal Injury Representative.

Monitoring:

- In medical rehabilitation, it is the Personal Injury Representative's responsibility to observe and evaluate medical treatment which is aimed at return to work (RTW) or return to pre-accident status.
- In vocational rehabilitation, it is the Personal Injury Representative's responsibility to observe and evaluate all vocational activities that seek to return to work or return to pre-accident activities.

Coordination:

- In medical rehabilitation, the treating physician should coordinate the activities of all health care providers. However, this does not always occur and is often left to the Personal Injury Representative. This function requires a case manager to ensure that all providers, the employer, and the claimant know what is happening in the claim, and that all goods and services are delivered in a timely way.
- In vocational rehabilitation, the Personal Injury Representative may retain the coordination function or may delegate it to a vocational rehabilitation consultant."

Commentary

The Committee looked closely at case management as a process that is central to the effectiveness of the Personal Injury Protection Plan. We sought the views of health care providers, injured persons, and the Personal Injury Representatives to help us understand the current state of case management and identify issues that needed attention.

In addition, the Committee decided that to assist in the review of the case management process, external assistance would be valuable. Accordingly, the Committee engaged William M. Mercer Limited (Mercer) to evaluate SGI's rehabilitative case management performance. The Mercer review was based on examination of 101 injury claim files and is included in full as an appendix to this report.

Mercer looked at the injury claim files from the perspective of a case management framework that defined specific expectations for performance of the identification, authorizing, monitoring, and coordination functions. Based on its review, Mercer reported to the Committee that the Personal Injury Representatives were doing *"an excellent job of case managing rehabilitation for injured claimants."*

Mercer pointed to a number of distinct strengths and weaknesses in the Personal Injury Representatives' performance:

Strengths	*Weaknesses*
Excellent customer service	Inadequate documentation of actions/decisions
Strong interpersonal and communications skills	Few forms or tools available to permit a structured documentation, decision and case management process
A good sense of timeliness	Little or no adjudication or use of the definition of disability
Excellent documentation of communication and interaction with claimants and health care providers	Case management functions cross over a number of individuals (e.g., the Personal Injury Representative, the treating practitioner, or the vocational rehabilitation consultant), creating complexity and some confusion of roles

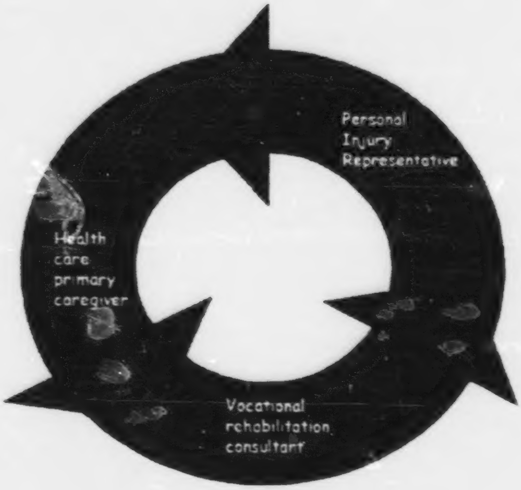
Mercer's findings, therefore, indicated that in case management, SGI is strong on service and weaker on process and documentation. Mercer also informed the Committee that this situation is in sharp contrast to the group disability insurance industry:

> *"With the exception of adjudication, SGI is philosophically and practically far in advance of group disability insurers. SGI's approach is outcomes-oriented, while group insurers are currently still focused on processes and paperwork."*

On balance, Mercer found that SGI's staff are providing *"good case management services, against considerable odds."* Mercer noted that more structure to the process would provide an ability to improve this already superior approach.

The Committee concluded that case management is a team effort, requiring a number of people to perform case manager functions at various points in the claim and rehabilitation process. Nevertheless, the Committee agreed that individual members of the team need to have their case management roles clearly defined, with the Personal Injury Representative playing a pivotal role in making the process work.

Case management team


Personal Injury Representative
Health care primary caregiver
Vocational rehabilitation consultant

Implications

Legislation and Regulations

No change in legislation or regulations is necessary to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

Rehabilitation and Medical Management

Recommendations

Choice of primary caregiver / practitioner: That the injured person's choice of a primary caregiver be formally acknowledged. That the individual practitioner be informed of the designation so that he or she may understand and fulfill the primary caregiver role in assisting the injured person, including the provision of timely and adequate reports.

Case manager role of Personal Injury Representative: That SGI clarify for injured persons and health care providers the Personal Injury Representative's case management roles and responsibilities, particularly the distinction between these responsibilities and the direction of health care service that is the responsibility of the primary caregiver.

Case manager role of health care provider: That all participants in the process of helping an injured person with his or her rehabilitation actively share information with the primary caregiver and that the primary caregiver be proactive in working with other health care providers in the rehabilitative process.

Early Intervention Program: That SGI continue to use the Early Intervention Program approach to helping injured persons with their rehabilitation. That the purpose and process and value of the Program be more effectively communicated to injured persons, to the primary caregiver, and to other health care providers.

Secondary and tertiary assessment and treatment timing: That SGI shift the timing of secondary and tertiary assessment and treatment to be more systematic, with referrals triggered by defined timelines. That SGI explore the feasibility of convening a consensus conference of treatment stakeholders once an injury has been confirmed so that the injured person may have a multi-disciplinary review at the outset of the rehabilitation process.

Return to work alternatives and potential impact: That SGI incorporate a change management perspective into the return to work process so that injured persons have access to appropriate counselling and assistance to deal with the changes they are facing. That Personal Injury Representatives be trained in change management so that they might better identify injured persons who need this type of assistance.

Red flags: That regardless of the risk factors of an individual, the Personal Injury Representatives not make assumptions about a person's ability to cope based on those indicators. That SGI consider a specialized Personal Injury Representative group to handle longer-term claim files that involve significant risk factors. That communications with injured persons on their risk factors be clear and timely, with open dialogue on how the risks might best be managed.

Multi-dimensional view of wellness: **That SGI work with health care providers to develop more effective means of incorporating a multi-dimensional view of wellness early in the rehabilitation process.**

Acquired Brain Injury program: **That SGI continue its support for the Acquired Brain Injury program. That SGI seek other third party funders for the program with the possible objective of reducing SGI's support as other funding sources are secured. That SGI work with the health care community to address the issue of delayed diagnosis and referral to the program for services.**

Contract services: **That SGI continue to use contractor services, but within a well-defined and managed performance framework. That SGI work towards an early definition of standards for vocational rehabilitation consulting services.**

Diagnosis: **That in its interactions with health care providers, SGI address the issue of diagnosis as a priority, including asking the primary caregiver for diagnosis information on a timely basis and ensuring follow-up where necessary.**

Roles and responsibilities of health care providers: **That SGI be proactive in working with health care providers to ensure that they understand, accept, and fulfill their roles and responsibilities related to the recovery and rehabilitation of injured persons under their care. That when there is evidence of sub-optimal performance by a health care provider, SGI take the initiative to refer the issue to the appropriate professional self-governing body.**

Responsibilities of injured persons: **That SGI emphasize in its communications with injured persons the responsibilities that they as claimants must fulfill on a timely basis related to their injury claims. That the communications emphasize the importance of fulfilling these responsibilities as positive and constructive in helping individuals to control and contribute directly to their successful recovery and rehabilitation.**

Use of health care consultants: **That SGI continue to enhance its use of health care consultants, particularly in communicating with health care providers responsible for the care of injured persons. That SGI consider the feasibility of adopting or adapting the in-house health care staff model used by WCB organizations to support effective health care management for injured persons.**

Dealing with loss and grief: **That SGI take a broader view of grief to ensure that supportive counselling services are provided to injured persons who need them.**

Chronic pain management: **That SGI take a leadership role in establishing more optimal chronic pain management services across the province, similar to what it did in establishing the Acquired Brain Injury Program. That in this initiative, SGI work in collaboration and on a cost shared basis with Saskatchewan Health, the Workers' Compensation Board and other agencies.**

Rehabilitation and medical management is the process that is the heart of the Personal Injury Protection Plan. For minor injuries, this can be a reasonably simple process occurring over a fairly short period of time. However, for more substantive injuries, the actions taken in helping individuals to "recover to the fullest extent possible from their injuries" can involve a complex array of providers and services.

The Review Committee was assisted in its review of this process by injured persons who reported to us on their own experiences, by health care providers who provide services to injured persons, and by SGI's own Personal Injury Representatives and medical consultants.

Current Situation

The rehabilitation and medical management process involved in the Personal Injury Protection Plan is integrally linked with the health care system. The strengths and weaknesses of that system can therefore have a direct impact on injured persons and their progress towards recovery.

Similar to an interaction with the health care system if a motor vehicle crash is *not* involved, the injured person chooses his or her first point of contact with a health care provider after the injury occurs – this may be a physician, a chiropractor, or a physiotherapist. The nature of the injury should then be determined, or follow-up tests should be undertaken to assist in the diagnosis. The next step should be the development and implementation of a treatment plan, with the injured person and health care provider(s) working in concert to achieve defined goals.

The Personal Injury Protection Plan brings another element to the normal health care process – the insurer, which will pay for costs associated with the diagnosis and treatment of the injury when it is the result of a motor vehicle crash. SGI plays a supporting and monitoring role through the process, ensuring that reports are obtained at appropriate times and that the rehabilitation and medical management fall within a defined framework.

As confirmed by Mercer in its report to the Committee, rehabilitation is divided into medical and vocational areas:

- **Medical rehabilitation:** The treatments, therapies, and medications which are provided to an injured claimant to return him or her to as close to pre-injury medical status as possible. In Saskatchewan, these may be provided by a chiropractor, physiotherapist, or medical doctor, any one of which might become the injured person's primary caregiver. The primary caregiver has control over development and delivery of the medical rehabilitation plan, and the Personal Injury Representative has responsibility for monitoring the completion of these steps and reports on progress.
- **Vocational rehabilitation:** The re-establishment of an injured person in a previous occupation or establishment in a new occupation. In the case of non-earners (i.e., students, homemakers, retired or unemployed people) it means a return to pre-accident activities to the extent possible. In vocational rehabilitation, the Personal Injury Representative is responsible for ensuring that a rehabilitation plan is developed and delivered.

The rehabilitation process incorporates four phases, as described to the Committee by Mercer:

Assessment

- In medical rehabilitation, the treating practitioner determines the diagnosis.
- In vocational rehabilitation, the Personal Injury Representative or a vocational rehabilitation consultant (VRC) determines the barriers to return to work or return to pre-accident activities.

Planning

- In medical rehabilitation, the treating practitioner informs the patient as to the recommended treatments, therapies, and medications.
- In vocational rehabilitation, the Personal Injury Representative or the vocational rehabilitation consultant, in concert with the claimant and in consultation with the employer, develops a plan for return to work or return to pre-accident activities.

Plan Implementation

- In medical rehabilitation, the treating practitioner administers the therapies, treatments, and medications that have been prescribed.
- In vocational rehabilitation, the Personal Injury Representative or vocational rehabilitation consultant oversees the activities required to attain the goal identified in the planning phase.

Follow-up

- In medical rehabilitation, the treating practitioner may contact the claimant after successful conclusion of treatment to reduce the possibility of a relapse. In practice, this is rarely if ever done.
- In vocational rehabilitation, the Personal Injury Representative or vocational rehabilitation consultant contacts the claimant after a successful return to work or return to pre-accident activities, again, to reduce the possibility of a relapse into total disability.

Commentary

The Committee heard a great deal about the rehabilitation and medical management process of the Personal Injury Protection Plan.

From some injured persons, we heard about their trust relationship with primary caregivers and about satisfaction with the rehabilitation process. However, the Committee also heard from many other injured persons who reported difficult experiences that have left them frustrated, disappointed, and in quite a number of situations, angry. These difficult experiences were attributed to a range of causes, including *delays* in testing, diagnosis or treatment, *misdiagnosis* or inappropriate treatment, and *termination* of treatment benefits.

Although the Committee heard a variety of reasons for these difficulties, the injured person frequently blamed both the health care provider(s) and Personal Injury Representative(s). Poor communications appeared to be a common concern, particularly the timely provision of reports between health care providers. However, timeliness was not the only issue with reports from health care providers. Injured persons also noted that the reports were sometimes incomplete or insufficiently informative. These deficiencies could cause delays – for example, SGI may need to ask for an additional report or ask a health care consultant for an opinion.

From health care providers, the Committee heard generally strong support for the Personal Injury Protection Plan's proactive multi-disciplinary rehabilitation focus. A number of organizations and practitioners indicated to the Committee that the Plan's focus promotes timely provision of services and therefore contributes effectively to the recovery of injured persons. For example, the Saskatchewan Physiotherapy Association noted:

> *"Individuals who have sustained soft tissue injuries such as whiplash associated disorder, have access to more care than ever before, ranging from individual practitioners (primary care) to interdisciplinary teams (secondary and tertiary).*
>
> *Emphasis has been placed on functional improvement and prevention of chronicity. The efficacy of this approach is supported in the literature and is applauded. We believe the use of interdisciplinary teams at appropriate levels of recovery is the best strategy to ensure maximal recovery for claimants."*

From SGI personnel and medical consultants, the Committee heard about challenges in dealing with primary caregivers, including (a) inadequate understanding of or adherence to Early Intervention Program principles, (b) poor reporting practices, (c) delays in referrals to secondary and tertiary assessment/treatment, (d) diagnosis errors and (e) lack of expertise in muskuloskeletal injuries. The Committee heard that there is a major need for increased awareness, understanding, and practice of evidence-based interdisciplinary care by primary caregivers in dealing with injured persons.

The Committee considered a broad range of issues related to the rehabilitation and medical management process of the Personal Injury Protection Plan. We identify and provide comments on several of these issues in the following paragraphs.

Choice of primary caregiver

The ability of injured persons to choose who will be their primary caregiver through the rehabilitation process is a fundamental tenet of both the health care system and the Personal Injury Protection Plan. The choice can be made from three groups: physicians, chiropractors, and physiotherapists.

Although injured persons are free to choose their primary caregivers, the current process does not involve a formal designation of a caregiver in this primary role. The Committee offers the following observations:

- The injured person should formally choose and designate a practitioner as his or her primary caregiver. If an injured person decides to change to another practitioner at some point, then this transfer in role should be formalized.
- The injured person needs to know that he or she has chosen a primary caregiver that will provide ongoing assistance and guidance through the rehabilitation process.
- The insurer needs to know who the primary caregiver is.

- The primary caregiver needs to know he or she is the primary caregiver and then understand and fulfill his or her role in assisting the injured person, including the provision of timely and adequate reports to the insurer.
- Effective communications are central to all of these steps.

The Committee noted that if the assignment of the primary caregiver role is not clear to the injured person, the caregiver, and the insurer, more than one caregiver may assume the role. This would logically lead to the Personal Injury Representative having to deal with a health care issue, contrary to his or her proper role.

In addition, if the designated role is more formalized, the injured person's change of primary caregiver can be more readily acknowledged and communications can then shift accordingly. The Committee was informed that a number of injured persons change their primary caregiver, sometimes more than once through the course of the rehabilitation and recovery process.

The Committee recommends that the injured person's choice of a primary caregiver be acknowledged formally, with the individual practitioner being informed of the designation so that he or she may understand and fulfill the primary caregiver role in assisting the injured person, including the provision of timely and adequate reports.

Case manager role of Personal Injury Representative

As indicated in the SGI internal manual, the Personal Injury Representative is expected to play an essential role in the medical management of a claim through:

- Securing medical information as soon as reasonably possible;
- Keeping medical information current;
- Requesting reports from the primary caregiver on a timely basis;
- Securing independent medical examinations whenever the extent of treatment, disability or duration of the injury requires a second opinion; and,
- Consistently attempting to enlist the cooperation of the primary caregiver in providing medical documentation.

The Committee heard from a number of injured persons who felt that the Personal Injury Representative was "directing medical care" and that this was inappropriate. Health care providers also expressed some concern in this area. For example:

- The Chiropractors' Association of Saskatchewan indicated to the Committee that their members had reported instances of a Personal Injury Representative (a) refusing to pay for concurrent physical therapy and chiropractic treatment and (b) suggesting that one form of treatment may be superior to another.
- The Saskatchewan Physiotherapy Association indicated that *"some adjusters override recommendations made by primary care providers, thus interfering with medical management, giving the impression that they control the patient. This demonstrates a lack of respect for the opinion of care providers. Some* [adjusters] *will delete aspects of the treatment program dependent on what they deem is necessary."*

The Committee agreed that Personal Injury Representatives should clearly not be making judgements that belong in the purview of health care professionals. However, the Committee recognized that in the context of being a case manager, the Personal Injury Representative will need to communicate decisions related to health care services and management of the rehabilitation process.

In addition, and as Mercer has confirmed, the Personal Injury Representative has a role to play in ensuring that claimants receive the care that will allow their recovery to progress swiftly. This role is of increasing importance when the primary caregiver of the injured person does not perform his or her case management responsibilities effectively. The Committee came to the understanding that in such a situation, the Personal Injury Representative takes on a broader case management role by default.

The Committee was informed by staff at one secondary assessment and treatment centre that WCB staff use a "health care facilitator" role in acting as a case manager on a collective basis. The facilitator meets monthly with the secondary centre staff to discuss a group of cases, providing an excellent opportunity for sharing information and providing clarity on legislated timeframes. SGI may want to consider having its Personal Injury Representatives take a similar approach in dealing with secondary centres.

The Committee recommends that SGI clarify for injured persons and health care providers the Personal Injury Representative's case management roles and responsibilities, particularly the distinction between these responsibilities and the direction of health care service that is the responsibility of the primary caregiver.

Case manager role of health care providers

The health care case manager role is one that requires an ability to make judgement calls and decisions for the injured person's rehabilitation process. As noted by the Chiropractors' Association of Saskatchewan,

> *"The case manager should be an individual who has the necessary training to possess the skill set required to be a primary level practitioner. This would require a skill set which includes the ability to diagnose, the ability to manage muskuloskeletal conditions, and the ability to recognize signs of other health issues and to refer the patient to the appropriate health care provider. In general terms, only physicians, chiropractors and physical therapists satisfy the criteria."*

The Committee focused early attention on the case manager issue as an essential element of dealing effectively with injured persons and their rehabilitation process.

The logical assignment of the medical case manager role is to the primary caregiver – a physician, chiropractor, or physiotherapist. However, once an injured person progresses to secondary and tertiary level assessment and treatment, the individual is dealing with a multi-disciplinary team and his or her own primary caregiver can end up having less involvement and control.

The Saskatchewan Physiotherapy Association commented on this issue to the Committee:

> *"We agree that many claimants are confused as to who really is 'in charge' of their care. This is particularly an issue when a number of agencies are involved. SGI's recent reliance on private case managers/vocational advisors has further muddied the waters for both claimants and health care providers.*
>
> *Case management is an effective way to coordinate services for claimants with complex needs. Because each claimant has specific needs, the individual that would be most appropriate to act as the case manager will vary. In some instances, the SGI Personal Injury Representative may aptly fill this role; in other situations, care providers with the greatest involvement may be more suited. However, any case manager needs to be trained in case management and have defined responsibilities which are communicated to all involved. This does not happen consistently with the current system."*

The Committee was also told by physicians that the primary caregiver must remain *involved* and *informed* in order to be able to fulfill his or her responsibilities to the injured person. The effectiveness of primary caregivers' involvement and flow of information to them varies from situation to situation, but appears to be a greater issue once the injured person is referred to the secondary or tertiary level.

The Committee agreed that the primary caregiver has an important role throughout the claim and rehabilitation process, and noted that this can only be accomplished through active sharing of information and effective communication among health care providers and between them and SGI.

The Committee noted that Mercer's review findings confirmed a concern that was voiced by others through the review process:

> *"SGI is often excluded by the health care community from the medical rehabilitation planning process, through late submission of claims or reports, or through provision of incomplete reports. With the exception of certain modalities that are restricted, it was uncommon in the files reviewed for health care providers to request approval of, or even provide notification of, rehabilitation/treatment plans."*

The Committee recommends that all participants in the process of helping an injured person with his or her rehabilitation actively share information with the primary caregiver and that the primary caregiver be proactive in working with other health care providers in the rehabilitative process.

Early Intervention Program

The Early Intervention Program (EIP) was developed in 1995 and is an important part of injury rehabilitation in Saskatchewan. The EIP as adopted by SGI has strong credibility in the health care community, especially for use in dealing with soft-tissue injuries, which represent more than 80% of all crash-related injuries. Soft-tissue injuries affect muscles and include low back pain and whiplash. Whiplash is due to the sudden bending or straightening of the neck, and may cause headache, and/or pain and tenderness of the muscles supporting the head and neck.

The EIP approach is based on the findings of the Quebec Task Force on Whiplash Associated Disorders and the U.S. Department of Health and Human Services. The EIP incorporates a set of treatment timelines and protocols to form rehabilitation plans for injured persons. Primary, secondary, and tertiary levels of care are involved within a defined timeframe.

Primary care – the first level of rehabilitation, from a physician, chiropractor or physiotherapist

During the first six weeks after the injury, a physician, chiropractor or physiotherapist provides care consisting of appropriate education, medication, therapy, home exercise, and sometimes, a fitness program.

Secondary care – the second level of rehabilitation, from a team of medical practitioners such as physicians, chiropractors, and physiotherapists

If after the first six to eight weeks, the injured person has not recovered or improved significantly, he or she may be referred to a secondary centre for an assessment by a team consisting of a physician, chiropractor and physiotherapist. This referral is made by the injured person's primary caregiver (physician, chiropractor, or physiotherapist) or by the Personal Injury Representative in consultation with the primary caregiver.

The Personal Injury Representative explains the Early Intervention Program secondary level to the injured person, including the fact that SGI will cover the costs of required medical treatment, travel, income loss, personal care, and home or child care if needed. The secondary team is to confirm the injury's diagnosis, review prior treatment, and recommend either (a) continued primary care or (b) a secondary level of treatment. This information is to be included in a report to the Personal Injury Representative and the injured person's primary caregiver(s).

Based on the results of the secondary assessment, the Personal Injury Representative will assist the injured person and his or her caregiver(s) in implementing the recommendations, whether they be for additional primary care or a secondary level of treatment. The timeframe for a secondary treatment plan extends to 12 to 16 weeks.

Tertiary care – the third level of rehabilitation, from a team including a physician, chiropractor, physical therapist, psychologist, occupational therapist, and possibly a dietician, exercise therapist, family counselor, pharmacist, recreation therapist, registered nurse, social worker or vocational counselor

If after the first 12 to 16 weeks after the injury, the injured person has not recovered or improved significantly to return to pre-accident functioning , he or she may be referred to one of two tertiary centres (FIT for Active Living at Saskatoon City Hospital or the Functional Rehabilitation Program at Wascana Hospital in Regina) for assessment and treatment by a multi-disciplinary team consisting of physical rehabilitation experts, psychologists, social workers, occupational therapists, and others. The FIT for Active Living program has recently received accreditation by the Council on Accreditation of Rehabilitation Centres (CARF) as an Occupational Rehabilitation Program.

The referral to tertiary is made by the Personal Injury Representative in consultation with the primary caregiver of the injured person. SGI has defined indicators for tertiary assessment as including:

- The injured person has not achieved the predicted recovery goal and there is no significant progress;
- The injured person is receiving income replacement benefit, child care, or personal/home care benefits and return to normal activity has not occurred;
- Risk factors are involved (e.g., significant potential for the disability to become chronic); and,
- The injured person has a complicating pre-existing condition such as fibromyalgia, diabetes, or depression.

The tertiary assessment team provides a report with recommendations to the Personal Injury Representative and the injured person's primary caregiver(s). Then the injured person meets with the tertiary team and is advised of the findings and recommendations. The Personal Injury Representative is to assist the injured person and his or her caregiver(s) to implement the recommendations.

Tertiary treatment is an in-patient, multi-dimensional interdisciplinary program that addresses physical, psychological, social, educational, vocational, economic, and/or lifestyle issues. The injured person may have a treatment plan that involves physical conditioning, pain management and stress management, and a return to work plan.

The Committee was informed by a health professional that:

> *"SGI's Early Intervention Program operates as an island of highly managed health care in the context of a much less rigorously managed general health care system."*

Despite this endorsement, a number of issues were identified by injured persons and by health care providers to the Committee:

- Some injured persons see the Early Intervention Program as "cookie cutter" in approach and insensitive to an individual's circumstances.
- Nurses emphasized that the early intervention program must have the approval of the individual's primary caregiver prior to commencement of the program, although this approval is not always in place.
- Nurses also noted that injured persons must be advised that they have the ability to discontinue the Early Intervention Program if it is worsening their condition, but this does not always happen.
- The EIP is not broadly understood or followed across the health care community, particularly with physicians.
- Some physicians are of the view that some referrals and treatments at secondary and tertiary centres are inappropriate and unnecessary, and that this would be rectified if patients are referred only at the request of their primary caregiver, the request of the patient, or if the patient after a significant length of time is unable to return to his or her former occupation or lifestyle.

A rheumatologist that has worked with rehabilitation clinics in Saskatchewan since 1995 made the following observation in his submission to the Committee:

> *"No fault promotes health by encouraging early intervention with active rather than passive therapy, by setting goals of therapy, and by early return to pre-accident activities ... No fault treats motor vehicle accidents as a health issue and spends its resources on rehabilitating the individual."*

The Committee recognized that there is room for improvement in the Early Intervention Program, particularly in effectively communicating important information to injured persons, to the primary caregiver, and to other health care providers.

The Committee recommends that SGI continue to use the Early Intervention Program approach to helping injured persons with their rehabilitation. The Committee further recommends that the purpose and process and value of the Program be more effectively communicated to injured persons, to the primary caregiver, and to other health care providers.

Secondary and tertiary assessment and treatment timing

As indicated above, the timing for transition of an injured person from primary to secondary to tertiary assessment and treatment has a defined framework. The management of the transition is within the jurisdiction of several people, including the primary caregiver, the Personal Injury Representative, and the health care service provider(s).

Issues related to the secondary and tertiary assessments, treatment, transition and timing were raised by both injured persons and health care providers. While the Committee heard conflicting opinions on a several points, a number of findings were reasonably consistent:

- If injured persons do not have access to secondary and tertiary care at the appropriate times, their overall recovery can be impeded.
- Some injured persons are not referred to secondary or tertiary assessment and treatment on a timely basis, and certainly not in line with the framework that was established for these referrals.
- Multi-disciplinary coordination and teamwork is evolving and advancing over time, but they still need improvement to serve the injured person's needs effectively.

Mercer looked at the timing of transition as part of its review of 101 injury claim files and found evidence of the delays:

> *"For the 24 cases, where the* ***date of referral to secondary assessment*** *was found, the average elapsed time from date of loss to date of referral was 17 weeks. This figure further breaks down to an average of 16 weeks for income replacement benefit cases and 19 weeks for no-income replacement benefit cases. This is well beyond the six to eight weeks suggested in the Uniform Guidelines.*
>
> *For the 20 cases, where the* ***date of referral to tertiary assessment*** *was found, the average elapsed time from date of loss to date of referral was 47 weeks. When we further divide this figure we find an average of 34 weeks for income replacement benefit cases and 89 weeks for no-income replacement benefit cases.*
>
> *It is our understanding that the timelines in the Uniform Guidelines (specifically, referral to secondary and tertiary assessment) apply to cases where the claimant is* ***not*** *making 'significant improvement'. It is important to recognize that the evaluation of whether or not a treatment plan is achieving 'significant improvement' is a matter of judgement. Our judgement may differ from that of the Personal Injury Representatives (or treating professionals) handling the cases due to hindsight, or because they had knowledge that is not documented in the files or file notes."*

Delays in secondary and tertiary assessment and treatment have been attributed to a number of potential factors, including the approach of individual Personal Injury Representatives, the caseloads of Personal Injury Representatives, waiting lists, the level of cooperation between care providers, and the time involved to organize a multi-disciplinary team assessment appointment involving contract providers. The Committee was uncertain as to the primary cause of the delays, but was of the strong view that they represent a serious problem that undermines the effectiveness of the Personal Injury Protection Plan in helping injured persons with their recovery and rehabilitation.

A potential solution to the apparent delays in getting injured persons access to secondary and tertiary assessment and treatment was recommended to the Committee by the Chiropractors' Association of Saskatchewan (CAS):

> *"SGI should organize a consensus conference of treatment stakeholders to address the specific issue of ongoing impairment after an accident. The consensus conference would be charged with providing a policy framework for determination of ongoing impairment and when supportive care is appropriate. This policy could then be applied to the existing policies of when to assess a final determination of impairment."*

As the CAS indicated to the Committee, some injured persons should be sent to tertiary treatment immediately after their accidents. With the consensus conference approach, a set of criteria could be defined that would allow direct referral in these situations but without application of an entirely time-based framework.

Another potential solution is to make the assessment referral automatic according to the defined timelines. While this would imply a less discretionary approach than that now being applied, it would certainly address the delay issue and would simplify matters for both the Personal Injury Representative and the primary caregiver. Rather than having to deal with conflicts of opinion or assumptions about improvement, the Personal Injury Representative and primary caregiver would simply be following "due process". The judgement of the Personal Injury Representative and primary caregiver would not therefore, be in question.

The Committee heard support for this alternative from the physician community and from members of the Interdisciplinary Rehabilitation Teams at Saskatoon City Hospital. The latter recommended:

> *"... stricter enforcement of time guidelines for secondary and tertiary interdisciplinary assessment. If an individual has not returned to normal function by 6-8 weeks post injury, a secondary assessment must be mandatory. For those with complex injuries and/or major psychosocial barriers to recovery and/or no gainful employment prior to injury, a tertiary assessment must occur by 3 months post-injury."*

The Saskatchewan Physiotherapy Association also recommended *"a more aggressive application of the timelines recommended for secondary and tertiary intervention"*, although the Association indicated that a review of these timelines may need to be done to determine their appropriateness.

As noted to the Committee by a physician, even if the assessments are made more automatic, flexibility and control will remain in the hands of the primary caregiver with respect to what to do with the results of the assessments. These are decisions which should be made in consultation with other caregivers.

The Committee is convinced that a move to more automatic, time-triggered referrals would help to resolve a major issue. While recognizing that this is a deliberate choice of a time-driven assessment over an evidence-driven assessment, the Committee agreed such a change is appropriate in these circumstances.

The Committee recommends that SGI shift the timing of secondary and tertiary assessment and treatment to be more systematic, with referrals triggered by defined timelines. The Committee further recommends that SGI explore the feasibility of convening a consensus conference of treatment stakeholders once an injury has been confirmed so that the injured person may have a multi-disciplinary review at the outset of the rehabilitation process.

Return to work alternatives and potential impact

In its internal manual for Personal Injury Representatives, SGI has defined a number of alternatives in planning for a return to work:

1) Same job, same employer;
2) Same job, same employer, modified duties;
3) Different job, same employer, using transferable skills;
4) Different job, different employer, using transferable skills;
5) Different job, same or different employer, involving training or re-education;
6) Self-employment (for individuals who were previously self-employed).

The Personal Injury Representatives are to work for cooperation and consensus involving the injured person, the primary caregiver, and, when possible, the employer, to advance those options that fit the injured person's circumstances.

With the exception of the first option (same job, same employer), the injured person will be facing a change, and possibly quite a significant one (e.g., doing different work, working with different co-workers, etc.). Dealing with such a change can have a dramatic impact on some people.

The Committee heard from a number of injured persons who had great difficulty dealing with a change in employment and/or a need to undergo training or re-education. The psychological impact from this change can in some cases be quite significant, resulting in distress to the individual that can make dealing with the practical realities very difficult.

This is an area where some people will need more help than others, but it should be recognized generally that injured persons working towards different return to work scenarios will need change management skills and assistance. SGI should ensure that its Personal Injury Representatives address this need where it is evident, including referral to appropriate counselling services.

The Committee recommends that SGI incorporate a change management perspective into the return to work process so that injured persons have access to appropriate counselling and assistance to deal with the changes they are facing. The Committee further recommends that Personal Injury Representatives be trained in change management so that they might better identify injured persons who need this type of assistance.

Red flags (e.g., for soft tissue injury situations)

SGI uses a "red flag" approach to guide Personal Injury Representatives in their dealings with injured persons so that potential problems can be tackled on a pro-active basis, for the benefit of both the insurer and the injured person. "Red flags" are essentially risk factors that might interfere with an injured person's progress in recovery and rehabilitation and might in fact lead to the injury becoming chronic.

The Personal Injury Representative is directed to watch for "red flags" including the following examples (not a full listing):

Employment-related red flags (examples):

- The injured person's own job is inappropriate given his or her post-accident condition and alternative employment will be required.
- A return to work in any occupation is doubtful and the injured person needs assistance in order to return to work.

Medical-related red flags (examples):

- A clear diagnosis is lacking.
- There is a lack of medical progress.
- There are pre-existing conditions that complicate the disability.
- The recovery time exceeds the expected medical target.

Behavioural-related red flags (examples):

- The injured person has secondary depression or psychological problems.
- The family situation affects the injured person's desire to return to work.

Financial-related red flags (examples):

- The injured person is receiving benefits in excess of the amount he or she could have earned if employed.
- There is a spouse receiving other benefits or a pension.

The Committee recognized that Personal Injury Representatives have to deal with situations in which injured persons are demonstrating difficult behaviours, and that Personal Injury Representatives need tools to help them cope effectively with such situations. The Committee also recognizes that identifying risk factors is consistent with accepted health care practice in managing health care for an individual.

In fact, the use of risk factors in planning and delivering services can assist the insurer and caregivers in being more helpful to the injured person. For example, the Committee noted that the tertiary centres have identified a broad range of risk factors for chronic disability, including employment risk factors (e.g., an adversarial relationship with an employer), worker risk factors (e.g., a worker's lack of mobility), medical risk factors (e.g., frequent changes in the primary caregiver), and others (e.g., chronic pain).

Despite the general acceptability and usefulness of the risk factor approach, the Committee was concerned that the documentation of a "red flag" regime can have negative consequences. In particular, the Committee was concerned about the perception of "labelling" individuals as real or potential problems without necessarily being sensitive to the fact that different people have different coping strengths and weaknesses. The Committee noted that some people with multiple "red flag" indicators may have superior coping skills and will in fact not exhibit problem behaviours.

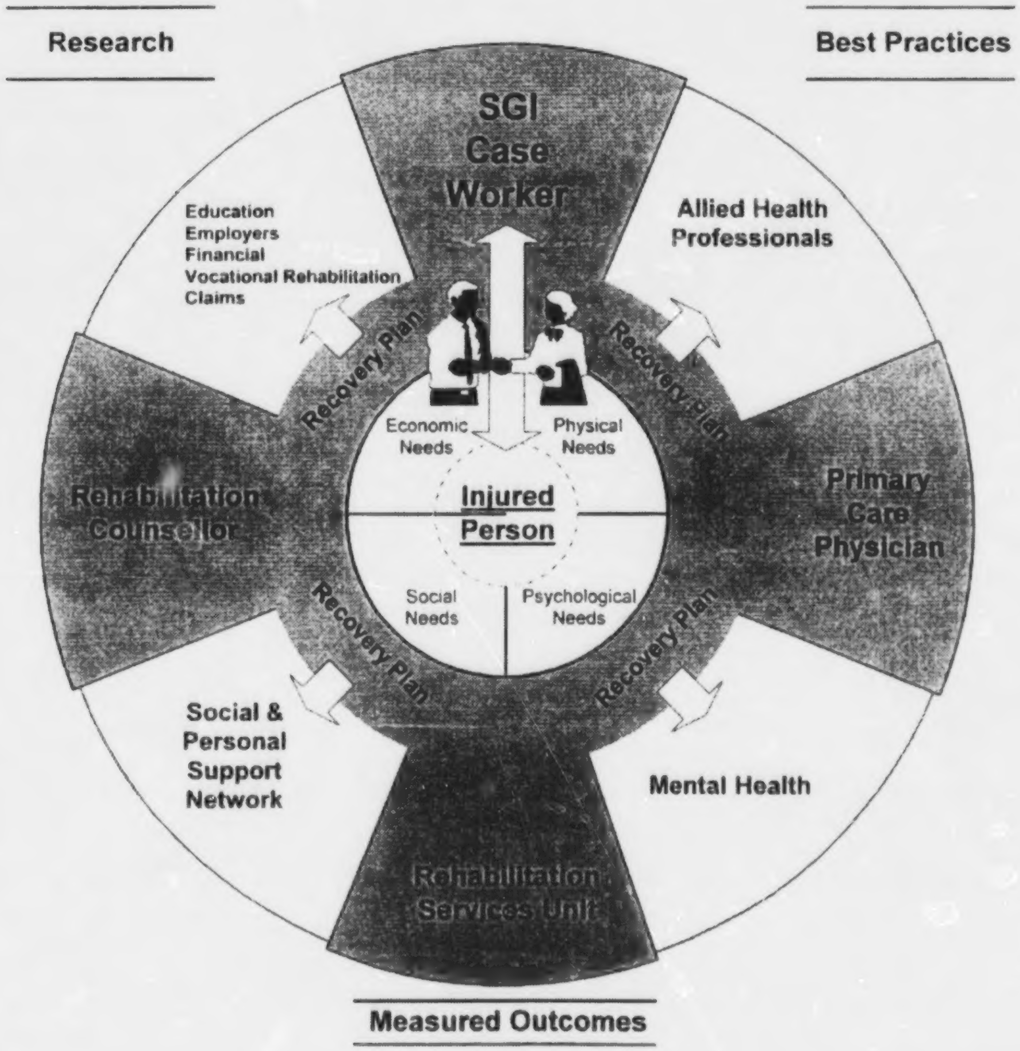
The Committee heard from many injured persons who have experienced great difficulty dealing with aspects of their injury and the PIPP process. In some cases, it seemed unlikely that their concerns can ever be resolved to their satisfaction. However, the Committee was of the view that SGI must work with these people with a consistently helpful and understanding attitude, and was concerned that the red flag framework may in some applications undermine this.

For longer-term chronic injury situations where a number of risk factors are evident, the Committee considered that assignment of such claim files to a more experienced, specialized group of Personal Injury Representatives may be a more effective approach than the current practice. These individuals could have advanced training in working with people that have multiple risk factors. However, the Committee recognized that this would likely mean initiating a change in the injured person's Personal Injury Representative, which could be potentially problematic for the injured person.

The Committee recommends that regardless of the risk factors of an individual, the Personal Injury Representatives not make assumptions about a person's ability to cope based on those indicators. The Committee further recommends that SGI consider a specialized Personal Injury Representative group to handle longer-term claim files that involve significant risk factors. The Committee also recommends that communications with injured persons on their risk factors be clear and timely, with open dialogue on how the risks might best be managed.

Multi-dimensional view of wellness

SGI documentation recognizes the multi-dimensional nature of an injured person's situation, as illustrated in the following diagram included in the corporation's internal manual:


Research
Best Practices
SGI Case Worker
Education
Employers
Financial
Vocational Rehabilitation
Claims
Allied Health Professionals
Recovery Plan
Recovery Plan
Economic Needs
Physical Needs
Injured Person
Rehabilitation Counsellor
Primary Care Physician
Social Needs
Psychological Needs
Recovery Plan
Recovery Plan
Social & Personal Support Network
Mental Health
Rehabilitation Services Unit
Measured Outcomes

Injuries from motor vehicle crashes can be both physical and psychological, and the two can be related – as in a chronic physical injury (or chronic pain resulting from that injury) having a psychological impact. Psychological injury can also impede recovery from a physical injury. This area of rehabilitation and medical management can be enormously complex, and can be very difficult for the injured person, health care providers, and SGI to deal with effectively.

The Committee gave considerable attention to a multi-dimensional view of wellness for the injured person. This was particularly important for people who experienced long-term issues such as chronic pain and for those who suffered a negative psychological impact from the injury and the personal loss(es) associated with it. The impact may go well beyond the emotional reaction to the loss of a loved one or the loss of a physical capability.

The Committee heard from a number of individuals and organizations that addressed the issue of psychological injury either directly or indirectly. The Committee recognized the complexity of this area and noted that it may require greater attention from SGI. For example, the corporation could continue to build on its use of a psychologist consultant model or explore alternative approaches with the health care community – such as earlier assessment of psychological impact of the injury, possibly at the primary care level.

The multi-disciplinary teams involved in the rehabilitation process incorporate a psychological component at the secondary and tertiary assessment and treatment points in the process. However, given the noted delays in referring injured persons to these services, they are likely also experiencing delays in obtaining assistance related to their mental health. As a result, they may develop chronicity that may have been avoided with more timely interventions.

The Committee recognized the general sensitivity involved in raising psychological issues with people. However, the Committee also recognized that public perceptions are shifting on this issue, particularly with the increased openness to acknowledging the impact extreme stress has on individuals. The Committee considered, therefore, that incorporating some psychological perspective early in the recovery and rehabilitation process could have great value for the injured person. This may require some rethinking of the front-end process of injury diagnosis and management, including the primary caregiver role.

The Committee recommends that SGI work with health care providers to develop more effective means of incorporating a multi-dimensional view of wellness early in the rehabilitation process.

Acquired Brain Injury (ABI) services

The Acquired Brain Injury Partnership Project funded by SGI ($16.6 million for the five-year period 2000-2004) and managed by Saskatchewan Health focuses on the prevention and rehabilitation of acquired brain injuries. Services are provided by 30 agencies and include:

- Three outreach teams located in Prince Albert, Saskatoon and Regina;
- 25 community-based programs located throughout the province;
- Assistance to individuals to develop memory, attention and problem-solving skills, social interaction skills and basic living skills so that they can live independently;
- Assistance to develop the skills needed to re-enter the workforce; and,
- Assistance to help the acquired brain injury person with successful integration into the community.

The Committee noted that the ABI program is viewed by many as a leading edge success story that could not have been accomplished without the initial and ongoing investment of SGI. Experience with the program is reportedly consistently positive.

Although services are available to all residents of Saskatchewan, regardless of how they were injured, SGI funds the entire program, thereby providing assistance to significantly more than the 50% of brain injuries caused by automobile crashes. In other words, the premium-paying public is funding part of a program that is not related to automobile crash injury claims. The Committee noted that by taking this broader approach, SGI is acting beyond its role as an insurer and has taken responsibility for funding part of the province's health care system.

The Committee commends SGI on taking the initiative to establish the ABI program and provide ongoing support. However, the Committee questioned the appropriateness of SGI paying for the entire cost of the program, including for those injuries not caused by automobile crashes. SGI's leadership was key to getting the program established, but ongoing funding might be reasonably viewed as a separate matter. In considering this issue, the Committee took careful note that SGI's withdrawal from program funding might in fact jeopardize its future.

A second issue related to the ABI program is the referral of injured persons to the program. The Committee heard instances of delays in ABI diagnosis, and the Chiropractors' Association of Saskatchewan noted that *"the most significant problem seen by the assessment teams is the frequency with which this disability was unrecognized."* In other words, once a referral is made to the ABI program, the experience of injured persons is generally a very good one. However, the process of diagnosis for referral is apparently preventing or delaying some individuals from getting timely access to these important services.

The Committee recommends that SGI continue its support for the Acquired Brain Injury program. The Committee further recommends that SGI seek other third party funders for the program with the possible objective of reducing SGI's support as other funding sources are secured. The Committee also recommends that SGI work with the health care community to address the issue of delayed diagnosis and referral to the program for services.

Contract services

In some cases, SGI uses contractors to provide rehabilitation services to injured persons, particularly vocational rehabilitation consultants (VRCs). Vocational rehabilitation consultants may be contracted to provide assistance with job search, job coaching, job development, transferable skill analysis, interest and aptitude testing, labour market surveys, and discussions with stakeholders (e.g., injured person, employer, union, etc.) on return to work plans.

SGI contracts with these service providers on a per claim file basis, and each contract varies from a single task to full case coordination services. SGI will use contractors as needed and as determined by the Personal Injury Representative. Vocational rehabilitation consultants may be contracted in order to:

- Use their specialized knowledge and expertise;
- Facilitate communication where there is a personality barrier between the Personal Injury Representative and the injured person; or,
- Facilitate discussions between multiple groups.

The Committee noted that a key issue in the use of contractors for services is quality assurance. With respect to the vocational rehabilitation consultants, the Committee heard from both injured persons and health care providers that the quality of service was not consistent. As the Personal Injury Protection Plan matures and gains more experience, the development of service standards and monitoring of service performance for contractors should become common practice. SGI has indicated to the Committee that it is working on a Best Practice Guideline for External Case Coordinators, including initial and progress reporting standards, timelines, and billing standards.

Mercer commented on the use of rehabilitation and vocational consultants in its review of the Personal Injury Protection Plan rehabilitation case management and adjudication:

> *"Mercer found that the Personal Injury Representatives used vocational rehabilitation service providers appropriately. 21 claimants (19 with income replacement benefits and two without income replacement benefits) were referred to vocational rehabilitation. The average time of referral was 20 weeks from date of loss while the median was 10 weeks. The difference between median and average indicates that some Personal Injury Representatives brought these service providers in early in the claim.*
>
> *The Mercer team found only two claims [of the 101 reviewed] where claimants, who were not referred to vocational rehabilitation, should have been referred. This is a very low incidence (2%). We would also point out that out of 19 claims where we could determine who identified the need for vocational rehabilitation, it was the Personal Injury Representative in 16 (84%) of the cases."*

Mercer found two cases where vocational rehabilitation providers were used as the case managers specifically because of the complex nature of the cases or the multiple services that the claimants needed. In these cases, the need was not necessarily for vocational rehabilitation only, but for a variety of services. Mercer viewed this as an excellent use of resources.

In contrast, the Committee heard from health care professionals that are concerned about some aspects of the contractor arrangement – for example:

- A lack of clarity in the case management role, since it appears to have been delegated from the Personal Injury Representative to the consultant in some instances; and,
- A lack of continuity in the service to the injured person.

The Chiropractors' Association of Saskatchewan raised three related issues in its submission to the Review Committee:

- *"Vocational rehabilitation consultants act as a link between the paying agency and the employer. This is often a very valuable function. However, increasingly, these groups have been contracted by SGI to manage difficult cases. The result of this is for the difficult files to be lost to the review which would normally happen in the process of file management ...*
- *There is access to medical advice on the files managed 'in-house'. It is possible that difficult files managed by vocational rehabilitation consultants may have no meaningful medical supervision of the file. For example, clients may be placed in return to work programs without specific information on functional ability. There must be prior functional testing, at least a functional abilities assessment, if there are questions about the ability to do job tasks.*
- *Once a file is contracted out to vocational rehabilitation consultant groups to manage, there is less involvement by the adjuster."*

The Committee recommends that SGI continue to use contractor services, but within a well-defined and managed performance framework. The Committee further recommends that SGI work towards an early definition of standards for vocational rehabilitation consulting services.

Diagnosis

Proper and timely diagnosis is central to the effective medical management of an injury. Diagnosis may be made by a primary caregiver (physician, chiropractor, or physiotherapist) or it may require the involvement of a specialist.

The Committee heard from injured persons of a disturbing number of situations involving delayed or wrong diagnoses of injuries. The result of these problems is inevitably negative for the injured person. He or she may have necessary treatment delayed or may even have inappropriate treatment.

The responsibility for this problem rests largely with the health care community. To mitigate the problem as fully as possible, SGI needs to ensure in its interactions with health professionals that the issue of diagnosis is a priority – for example, asking the primary caregiver the diagnosis information on a timely basis and ensuring follow-up where necessary.

Roles and responsibilities of health care providers

SGI is very much dependent on health care providers in ensuring that injured persons receive appropriate services on a timely basis. However, the health care providers are not accountable to the insurer for their professional performance. They are essentially self-governed in how they go about diagnosis, treatment planning, referral, monitoring of progress, and ongoing counselling of their patients. Where there is evidence of sub-optimal performance, this should be reported to self-governing bodies of the professionals involved.

The Committee noted that the effective performance of health care providers is central to the recovery and rehabilitation process for injured persons. The Committee also noted that this performance is contingent in part on the understanding, acceptance, and fulfillment of defined roles and responsibilities. In the course of the review of the Personal Injury Protection Plan, the Committee was made aware of issues related to all three factors: understanding, acceptance, and fulfillment. In addition, as noted earlier, Mercer commented on the roles and responsibilities of health care providers from the point of view of SGI being able to manage the rehabilitation process effectively:

> *"For medical rehabilitation, the Personal Injury Representatives usually received a treatment plan. Often this plan was detailed in the initial Practitioner's Report. However, some Practitioner's Reports were not as clear as others. This resulted in the Mercer team's assessment that the information provided did not constitute a medical treatment plan. Consequently, we judged that no treatment plan was present in approximately one-third of the cases. This appears to be a rather high frequency of files which do not appear to have any medical treatment plan."*

An additional issue relates to the primary caregiver's recognition of and adherence to established treatment guidelines. In the words of a health professional who commented to the Committee:

> *"If the clinical practice guidelines which are imbedded in the Early Intervention Program are applied with sound judgement and sensitivity, they are less likely to evoke negative responses from individual health professionals and/or their clients. When health professionals do not accept clinical practice guidelines, they simply ignore them. Health professionals put themselves at no direct risk by ignoring these guidelines. By contrast, injured persons do put themselves at risk because they find their SGI benefits terminated if they do not comply with programming defined in the guidelines."*

The Committee recognized that the use of clinical practice guidelines by health care providers to help the injured person's recovery is outside of the direct control of the Personal Injury Protection Plan. However, SGI can play an educational and influential role in working to ensure that health care providers understand and fulfill their roles and responsibilities related to injured persons covered by the Plan.

The Committee recommends that SGI be proactive in working with health care providers to ensure that they understand, accept, and fulfill their roles and responsibilities related to the recovery and rehabilitation of injured persons under their care. The Committee further recommends that when there is evidence of sub-optimal performance by a health care provider, SGI take the initiative to refer the issue to the appropriate professional self-governing body.

Responsibilities of the injured person

Injury treatment plans are developed based on the best information available for rehabilitation of a specific injury, and the injured person is expected to follow the recommendations of his or her treatment plan as developed by his or her caregiver(s). If the injured person does not agree with the treatment plan or a decision made by the Personal Injury Representative, he or she may appeal that decision.

An interesting and challenging component related to the injured person's responsibilities is that he or she is not dealing with the traditional health care system – where patients tend to take a rather passive role and expect the system to "fix them when they're broken". SGI's Early Intervention Program clearly places the onus on the injured person to take primary responsibility for his or her future well being. This involves people being educated about their physiological and psychological health situation and equipping them with skills to help them to regain and sustain a greater measure of fitness. Such an approach probably runs contrary to most of the previous experiences that people have had with the traditional health care system and therefore is inconsistent with their expectations.

The **Client Rights and Responsibilities** document used by the FIT for Active Living Program in Saskatoon states explicitly that clients are responsible to:

- Treat other clients and staff with respect;
- Take responsibility for their recovery by fully participating in the rehabilitation program; and,
- Communicate their concerns to the professionals working with them.

The Committee heard from a number of injured persons who indicated that they felt they were not "in control" of their treatment, and they clearly resented this. The requirement that they attend appointments and cooperate in treatments "or lose benefits" is viewed by some people as overly controlling and insulting to their own sense of responsibility and their own knowledge of themselves and what works for them.

In the Committee's view, more effort in communication with injured persons may assist in making them more comfortable with the process. In particular, the Committee suggests that Personal Injury Representatives and health care providers ensure they listen effectively to injured persons, and allow them opportunities throughout the process to express concerns, to explain what they think would be most effective for them, and to ask questions.

The Committee recognizes that it is the general intent of SGI and health care providers to do this, but it is apparent that this "listening time" is sometimes compromised, either by workload constraints or by people making assumptions about the injured person and/or treatment without necessarily validating them. The Committee believes that SGI should make listening a priority, and that if necessary, workloads and resource levels should be adjusted to make this possible.

The Committee recommends that SGI emphasize in its communications with injured persons the responsibilities that they as claimants must fulfill on a timely basis related to their injury claims. The Committee further recommends that the communications emphasize the importance of fulfilling these responsibilities as positive and constructive in helping the individual to control and contribute directly to their successful recovery and rehabilitation.

Use of health care consultants

SGI contracts with health care consultants to provide advice to Personal Injury Representatives and help ensure that an injured person's rehabilitation is proceeding effectively. Consultants review claim files and make recommendations for changes to treatment plans if they feel changes are necessary.

Currently, SGI's consultants include physicians, chiropractors, physiotherapists, and – most recently – a psychologist. The corporation is gradually expanding its use of contracted health care expertise.

As indicated in SGI's internal manual, the consultants are expected to serve as a resource to assist in measuring the management of a particular case against the accepted standards governing the treating practitioner. Where necessary, a consultant will contact the attending practitioner and assist in arriving at a consensus.

Personal Injury Representatives are to use consultants whenever any question arises with respect to medical or rehabilitation management. The consultants provide assistance to the Personal Injury Representative in formulating a decision. Personal Injury Representatives are to discuss the consultant's recommendations with the injured person's primary caregiver and work with him or her on any improvements to the treatment plan.

The consultants review claim file material, and may contact the practitioner, but they do not meet with the injured person. This approach concerns some injured persons, who have questioned the validity of a decision made based on a consultant's recommendations when no examination has been done.

Another concern in this area was raised by the Chiropractors' Association of Saskatchewan and relates to the access to SGI health care consultants. The CAS suggests that there should be increased access to in-house health care review using the WCB model of hiring full and part-time physicians, chiropractors and physical therapists to provide advice on medical questions.

The Committee agreed that SGI's use of health care consultants is important to the effective management of the Personal Injury Protection Plan. In particular, the Committee noted the professional support these individuals can provide to Personal Injury Representatives so that they might fulfill their roles effectively and avoid either the perception or the reality of the Personal Injury Representatives "directing" medical care. This avoidance is key to the integrity of the Personal Injury Protection Plan, and SGI should ensure that its Personal Injury Representatives recognize and respect this reality.

The Committee understands the concern of injured persons that a medical judgement would be made on their situation based solely on a claim file review. While this may be viewed as a lack of due process and common courtesy for the injured person, the provision of a consulting opinion based strictly on a review of the evidence on file is not uncommon in the health care system generally.

The Committee noted that where appropriate, the SGI health care consultants should play a key role in communications between SGI and primary caregivers as well as between SGI and health care specialists. This contact is especially important with respect to health care providers' timely reporting of health status and treatment of injured persons.

The Committee recommends that SGI continue to enhance its use of health care consultants, particularly in communicating with health care providers responsible for the care of injured persons. The Committee further recommends that SGI consider the feasibility of adopting or adapting the in-house health care staff model used by WCB organizations to support effective health care management for injured persons.

Dealing with loss and grief

Loss is frequently experienced when people are involved in motor vehicle crashes. An individual may lose an integral part of one's identity, including one's physical appearance or his or her physical capability or the ability to do a certain type of work. A person may even lose a loved one.

Loss often leads to grief. Regardless of the nature of the loss, grief is intensely personal, and every individual reacts in his or her own way and his or her own time. Similarly, "closure" of certain aspects of the aftermath of an injury can make it easier for an individual to move on to other priorities.

The Committee heard a number of people describe some truly tragic situations that resulted from motor vehicle crashes. We are grateful to these individuals for sharing these very painful experiences and for helping us to understand how they were affected by grief and how in some instances they felt a need for closure that could not be accommodated by the Personal Injury Protection Plan.

A loss of some kind appears to be an inevitable part of being injured, and the ability to deal with this loss is central to the recovery and rehabilitation of the individual. The Committee recognized that SGI cannot manage the grief and/or secure closure for the affected individual, but the corporation can certainly recognize this important emotional reality and ensure that its staff are trained to identify a need for special support for people who need it and then to guide individuals to get that support.

Grief counselling is clearly one aspect of this kind of support, but it is usually only considered when a death has been involved. The Committee was of the view that SGI should take a broader view of grief to ensure that supportive counselling services are provided in other situations as well.

The Committee recommends that SGI take a broader view of grief to ensure that supportive counselling services are provided to injured persons who need them.

Chronic pain management

Chronic pain can become a reality for some injured persons, and they may face the challenge of managing the pain for the duration of their lives.

In 1990, chronic pain was defined by Health and Welfare Canada in **Chronic-Pain Programs Guidelines** as *"pain which persists past the normal time of healing, is associated with protracted illness or is a severe symptom of a recurring condition. In most instances, the problem will have been present more than three months; in some circumstances, less time is required to identify the pain as chronic."*

In 1995, the Commission on Accreditation of Rehabilitation Facilities (CARF) defined chronic pain as *"... enduring pain that has not responded to previous appropriate medical and/or surgical treatment and which interferes with the persons' physical, psychological, social and/or vocational functioning."*

The management of chronic pain is an area receiving increasing attention in health care, but it is still not well understood across the health care community, and the approach to patients who have chronic pain is generally disjointed and uncoordinated. Primary care physicians who attend patients with chronic pain often refer them to a host of different consultants from whom they often get conflicting opinions and recommendations.

The evolving thinking about chronic pain is that a broad spectrum of health care professionals should act collaboratively as a team in the assessment of chronic pain and in the development of recommendations for each person who experiences chronic pain.

In the Personal Injury Protection Plan context, many of the injured persons who are referred to the FIT for Active Living Program in Saskatoon present with chronic pain. The multi-disciplinary team addresses this condition in their planning with the individuals affected. As indicated by members of the Interdisciplinary Rehabilitation Teams at Saskatoon City Hospital in their presentation to the Review Committee,

> *"It is better to focus on coping strategies and improving function than focus on one's pain and suffering and who is to blame for it."*

A coordinated interdisciplinary approach is integral to the Personal Injury Protection Plan tertiary programs, and is a good foundation for dealing with chronic pain situations. However, as made clear to the Committee during the review process, people are not referred to these programs in a timely manner. The delay is particularly problematic for people with chronic pain who have suffered for a long period of time already and have developed attitudes and behaviours that have become deeply entrenched. For these individuals, it is much more difficult to deal with their chronic pain issues.

In the view of the Committee, chronic pain is a significant issue that will grow in importance as the Personal Injury Protection Plan gains more years of experience. SGI can benefit from the attention to this issue by the health care community generally, but is in a position to advance chronic pain management services in Saskatchewan.

The Committee recommends that SGI take a leadership role in establishing more optimal chronic pain management services across the province, similar to what it did in establishing the Acquired Brain Injury Program. The Committee further recommends that in this initiative, SGI work in collaboration and on a cost-shared basis with Saskatchewan Health, the Workers' Compensation Board and other agencies.

Summary Conclusion

The rehabilitation and medical management process involved in the Personal Injury Protection Plan is complex, involving a multitude of stakeholders and steps. Conflicts and concerns are apparent in many areas of this landscape, and potential improvements have been suggested by injured persons, health care professionals, and SGI staff. However, much of the process is now working effectively for injured persons, partly because of the strong individual and collective focus on their recovery and rehabilitation.

The Committee suggests that SGI continue to actively solicit and consider stakeholder suggestions for improvement in the rehabilitation and medical management process, with a view to continuous improvement of this essential part of the Personal Injury Protection Plan.

Implications

Legislation and Regulations

No change in legislation or regulations is necessary to implement these recommendations.

Cost

The cost of implementing these recommendations should be minimal, depending on the cost of taking a leadership role in establishing chronic pain management services across the province. Based on a recent Saskatoon District Health and Regina Health District proposal for a provincial chronic pain management program, the initial investment may be in the order of $500,000, with ongoing costs of approximately $1.4 million annually. The appropriate portion of these amounts that SGI should consider funding would have to be assessed in the context of potential "partners" and other priorities.

> **"The rehabilitation and medical management process involved in the Personal Injury Protection Plan is complex, involving a multitude of stakeholders and steps. Conflicts and concerns are apparent in many areas of this landscape, and potential improvements have been suggested by injured persons, health care professionals, and SGI staff. However, much of the process is now working effectively for injured persons, partly because of the strong individual and collective focus on their recovery and rehabilitation."**

Appeals and Advocacy

Recommendations

That an independent personal injury advisory office be established, reporting to Minister of the Crown other than the SGI Minister, to assist injured persons when they are in disagreement with SGI, including assistance in all appeals processes.

That alternative dispute resolution processes be retained and expanded to replace the legislated internal review process; and that the injured person have a choice concerning such dispute resolution processes prior to appeal to an independent tribunal.

That an independent personal injury tribunal be established to deal with personal injury appeals, and that the tribunal include a legal and physical office separate from SGI, and report to a different Minister of the Crown.

That appeals from the personal injury tribunal to the Saskatchewan Court of Appeal be allowed, but only on a question of law or jurisdiction.

That the timelines for the appeals process be based on (a) the claimant making the appeal within one year of the decision in question and (b) each stage of the appeal – i.e., the alternative dispute resolution and the independent tribunal – allowing a maximum of 90 days from receipt of the appeal to a decision being required.

The current appeal mechanism for decisions made under the Personal Injury Protection Plan involves an internal review, mediation, and appeal to the Court of Queen's Bench. There is also a potential appeal to the Saskatchewan Court of Appeal on points of law or jurisdiction. The mediation stage is optional.

The Committee recognized a number of concerns about the current system:

- The internal review does not have the appearance of impartiality;
- The mediation stage is not successfully leading to settlement in many cases; and,
- The appeal to Court of Queen's Bench is too formal and too expensive, and is often too late to be of value.

The Committee noted that the latter stage of appeal is almost never used.

With respect to advice and advocacy for the injured person, the Personal Injury Representative is to play this role. If difficulties arise between the injured person and the Personal Injury Representative, there is currently no provision for any independent assistance to injured persons unless they pursue this themselves (i.e., through engaging the services of a lawyer). However, since the amount of money involved in a dispute will likely not be enough to pursue legal assistance, the injured person therefore effectively has no genuine recourse to the courts.

As well, the Personal Injury Representative may be the decision-maker on a disputed point and cannot therefore be the injured person's advocate, since she or he is representing SGI at that point in the process.

The Review Committee recommends a three-stage approach to appeals:

- Claims stage;
- Dispute resolution stage; and,
- Appeals stage.

The intent is a progression from informality to formality in dispute resolution.

At the initial claims stage, there should be no injection of an independent advisor or advocate since the position of Personal Injury Representative encompasses these functions. Training and enhancement of this position should ensure that advice and advocacy are fundamental characteristics of Personal Injury Representatives.

The dispute resolution stage could include a wider range of alternative dispute resolution (ADR) mechanisms available, including neutral evaluation, binding arbitration, and mediation. At this stage, the injured person should have available the services of an advisor or advocate from a newly-created and independent personal injury advisory office, staffed by persons with a range of expertise, including counselling and negotiation skills. The office should be responsible to a different Minister than is SGI.

The appeals stage should involve a new and independent personal injury tribunal that would take over the legislated role currently played by the Court of Queen's Bench in handling appeals. The tribunal should also be responsible to a different Minister than is SGI, and should draw on a variety of expertise. It should be less formal than the court system and be readily accessible. Where necessary, the injured person may be represented by a lawyer.

The basic model for the recommended advocacy and appeal structure is from Manitoba, where an Automobile Injury Appeal Commission took over the role played by the Court of Queen's Bench for appeals. Appeals in Quebec are also to an administrative tribunal. The experience with intermediate and alternative dispute resolution mechanisms in Ontario and British Columbia should also be looked at.

Current Situation

Currently, an injured person may dispute any decision by SGI. The first challenge is by way of internal review. By Section 194 of **The Automobile Accident Insurance Act**, an application requesting such a review must usually be completed within 60 days of receiving any letter in which a determination by SGI was made. The application may be for a review with or without a hearing. The SGI review officer then reviews the claim file, or attends a hearing with the injured person and any person he or she wishes to bring to the hearing.

SGI sets up an internal review panel consisting of three members who have not had any prior dealings with or input in the claimant's file. This panel has the authority to set aside, vary or confirm the initial decision.

A written decision on the outcome of the review, with reasons, is given to the injured person. The claimant must be notified of his or her right to appeal the decision further.

If the injured person is still not satisfied, he or she can apply within 30 days to have the dispute mediated for a fee, currently $38 (Section 196). A mediator is to be agreed upon by SGI and the injured person, with the costs of mediation borne by SGI. If there is no agreement as to a mediator, a court can appoint one. Mediators do not make decisions. They are appointed to *"endeavour to assist the parties to settle the issues that are subject to the mediation."* Mediation is optional for the injured person, who may by-pass this stage of the appeal process.

If the injured person disagrees with the decision after the internal review, *or* after both internal review and mediation, under Section 197 he or she can appeal to the Court of Queen's Bench within 90 days of receiving the decision. The Court may award interest on any benefits not paid that it decides should have been paid. Either the injured person or SGI may then appeal the decision of the Court of Queen's Bench to the Court of Appeal, but only on a matter of law or jurisdiction. This means that, if there is dispute about facts, the decision of the Court of Queen's Bench about those facts is final. However, in the Court of Appeal, the claimant can challenge the interpretation of the law by the Queen's Bench judge. As well, if as a matter of "jurisdiction" there is some other court or tribunal which should have heard the issue (perhaps a labour relations or human rights tribunal), this also can be argued in the Court of Appeal.

Commentary

The current process

The Committee acknowledged the general agreement that the current system is not satisfactory when looked at as a whole. Even though an internal process can be structured and managed to be fair and impartial, such a process does not have the *appearance* of impartiality, simply because it is internal.

The Committee noted that in the first five years of the Personal Injury Protection Plan, only 4% of injured persons appealed decisions related to their claims. This may be because interpretations by SGI are usually generous to injured people, or it may be because the appeal process is considered inadequate, or a combination of the two.

The Committee was informed that mediation was also not working as intended. In most cases a consensus is not reached. Mediation only works if both sides are willing to negotiate a solution, with each side approaching the problem with the idea that there may be room to move. Otherwise, mediation will not work. If SGI takes the position that benefit amounts are not negotiable, or a claimant takes the position that she or he simply wants more than the Act or Regulations provide for, mediation will fail.

The appeal to Court of Queen's Bench is almost never used. This is probably because it is too costly. As well, many injured persons are intimidated by the formality of a court process. Also, the amounts involved in the dispute may not be sufficient for the payment of a lawyer, particularly if there is any risk that the appeal will be unsuccessful, because there will then be no reimbursement for fees and costs. Time is also a problem. Court actions can be protracted, so that the result of the proceedings may come too late to be of much help to the injured person. It is often one year from the date of the initial decision before a judge hears the appeal, and it may be even longer.

Consumer advice and advocacy

Linked to the appeal process is the question of consumer advice and advocacy. A basic question is this: *Who in the process, if anyone, is the injured person's advisor and advocate?* One answer might be that it is the SGI Personal Injury Representative (Personal Injury Representative). This position developed from the role of adjuster under the pre-1995 accident compensation system. The concept of the Personal Injury Representative involves a much more consumer-oriented approach whereby the Representative is advising and helping the injured person with his or her rights under the Plan.

But what if the relationship between the injured person and the Personal Injury Representative develops problems that are not resolvable from the injured person's point of view? And how does one reconcile the role of the Personal Injury Representative as a *decision maker*, with his or her role as *client advisor*? The Personal Injury Representative makes very important decisions about benefit entitlements. Furthermore, many of these decisions are discretionary in the sense that an evaluation has to be made as to whether a certain type of assistance is appropriate. The Personal Injury Representative necessarily has the interests of SGI in mind as well as those of the injured person.

In many cases, even if an injured person does not agree with a decision made by a Personal Injury Representative, the two can continue to deal effectively with each other. However, if an injured person wishes to contest a decision or approach of the Personal Injury Representative, even if it is based on a non-discretionary policy or legislative provision, the Representative's ability to be the injured person's advisor or advocate can be viewed as diminished. This situation therefore presents a problem.

Although some injured persons may be knowledgeable enough to challenge decisions and obtain information relevant to their situations, many find this difficult to handle on their own. While they may get help from relatives and friends, or from community groups, it is the understanding of the Committee that many people have little or no knowledge of their rights, have no familiarity with SGI or its processes, and have no one who is any more knowledgeable than they themselves are to help them. The Committee also considered that many individuals may feel powerless in the face of a corporate entity such as SGI, or any government-related agency for that matter.

A breakdown in the relationship between the Personal Injury Representative and the injured person can create a lack of trust, and at this point, an injured person will probably need an advisor or advocate. In the latter stages of an appeal, as the process gets more formal, the individual will likely need a lawyer, particularly when SGI is using a lawyer for legal proceedings.

A Three-Stage Approach

The Committee was of the view that a three-stage approach should be taken to the combined issues of advice, appeals and advocacy.

1) Claims stage
2) Dispute resolution stage
3) Appeals stage

The progression here is from informality to formality. If disagreement and conflict arises between SGI and the injured person, there should be no abrupt shift into an adversarial position.

It is the view of the Committee that there should be no injection of an adversarial component into the initial claims stage. At the outset, the issues should be addressed in a non-adversarial manner with the Personal Injury Representative as the injured person's adviser and helper.

If problems do arise, a range of dispute resolution mechanisms can assist an injured person in coming to some agreement with SGI. These are sometimes called alternative dispute resolution (ADR) procedures because they are an alternative to traditional court litigation. However, these new mechanisms are now increasingly recognized by lawyers and others, and are treated as complementary to the more formal court processes. They are now an established part of the legal fabric, and should be incorporated as part of the prescribed process of resolving disagreement with SGI in a dispute resolution stage.

Finally, and only if the first two mechanisms have failed to resolve the dispute, the injured person should have the right to a hearing as an appeal. This would be the appeal stage of the process. The Review Committee is of the opinion that even this process should be deformalized to some degree. It should be an accessible process and much less costly than an application to the Court of Queen's Bench. There should be an independent personal injury tribunal set up under the Department of Justice to deal with this advanced stage of disputes relating to the Personal Injury Protection Plan.

The Review Committee agreed that there should be an appeal from the personal injury tribunal to the Saskatchewan Court of Appeal in the same manner as there is now an appeal under Section 199 from the Court of Queen's Bench. However, this appeal should only be on questions of law and jurisdiction.

Deformalizing Dispute Resolution

It is not surprising that there is some difficulty over how to handle disagreements within the context of the Personal Injury Protection Plan. The legal system is in the process of re-thinking its procedures for both criminal and civil cases. Dispute resolution as a whole is in a state of flux. There is a general move away from the formal, rather rigid court system toward other more constructive conflict resolution mechanisms.

Court actions frequently lead to frustration, antagonism and disharmony. And, as mentioned previously, they are expensive and protracted. The court process also focuses on the legal rights and duties of the parties, whereas other mechanisms tend to incorporate interests that are collateral to a litigant's strict legal rights. The court process has restrictive rules and procedures that prevent the parties from bringing into the dispute irrelevant material or evidence that is circumstantial and speculative. This keeps the dispute focussed. It also protects parties from rumour and speculation. On the other hand, the rules can sometimes hide the real issue in the dispute, which might turn out to be the way in which an injured person was treated by an official, or the fact that a mistake was made and no apology was forthcoming, or there may be some history known to SGI which it cannot introduce into formal evidence.

A wholly independent court process can be necessary when communication between parties has completely broken down. Some disinterested third party adjudicator is needed in order to resolve the dispute and put it to rest. At this point, the formalities and technical procedures may be necessary in order that justice be achieved as best can be. For example, the parties may need lawyers, because their expertise is to give the dispute its proper focus and help the litigants assert their ultimate legal rights. The rule of law is component of a free and democratic society, and the courts play an important role in maintaining it. Furthermore, the role of the courts is often to provide a forum for equalizing the imbalance between individual and the state, but this is so only if the individual is given the tools to equalize that imbalance, which usually requires the help of a lawyer.

On the other side, however, law can be so removed from the experience of the ordinary citizen that it becomes inaccessible. If the process of seeking legal rights in courts is too expensive, too difficult and too intimidating for people to use, those with the power may function arbitrarily and without regard to people's legal rights.

More accessible dispute resolution forums have been developed, including Labour Relations and Human Rights Tribunals. For the most part, these less formal court-like settings have proved much more successful from the point of view of the individual.

The Review Committee felt that it would be appropriate to have an appeal mechanism that would allow challenges to Personal Injury Protection Plan decisions to be dealt with by less formal conflict resolution procedures. These processes are more user-friendly and can be empowering to people who participate in them. The Committee understands that the record of compliance with such decisions is greater than for mandatory, more formal decision-making bodies. The parties involved can communicate with each other personally rather than through lawyers, and there can be a definite sense of closure and reconciliation. It is therefore much more likely that *harmony* will be achieved, which is one of the values emphasized by the Review Committee.

The Committee was made aware of the availability of mediation, neutral evaluation, and arbitration procedures that are used in Ontario. The Financial Services Commission (FSCO) in that province operates a Dispute Resolution Group to resolve disputes about automobile accidents. Extensive guidelines are available to help injured persons and insurer representatives through the process. They outline the responsibilities of the insurer and the claimant both in the claims process and for the purposes of mediation, neutral evaluation and arbitration. There is a fee schedule that is very moderate. The FSCO also advertizes an array of programs available on the Internet regarding current practices and new directions for dispute resolution services at the Commission, as well as issues of law.

The Committee also considered literature from British Columbia explaining the use of different dispute resolution techniques in that province. The most commonly used ADR processes are mediation and arbitration. Subject to the certain restrictions, an outcome can be binding or non-binding, depending on the parties' prior agreement. Usually, arbitration is a binding process.

The Insurance Corporation of British Columbia (ICBC) is the largest user of mediation in British Columbia. Of cases referred to mediation by ICBC, in about one-third, one of the parties refuses to mediate the matter. Another third of these cases are settled prior to mediation, with the conclusion often being facilitated by merely setting up the mediation process. Of the remaining cases referred, 83% to 85% settle successfully at mediation. This would mean that about 75% of the cases where parties agree to mediation are settled. In American states where mediation is mandatory, the figures are comparable.

It should only be after the intermediate dispute resolution mechanisms have proved unsuccessful that there should then be an appeal to the independent tribunal, with the possibility of a further appeal to the Saskatchewan Court of Appeal.

The Personal Injury Representative

The Committee determined that the claims stage of obtaining benefits should remain firmly in the hands of the SGI Personal Injury Representative. In a minority of instances of which the Committee was made aware, the approach of Personal Injury Representatives was viewed as adversarial and unhelpful by injured persons. However, the Committee concluded that in the majority of cases, Personal Injury Representatives had functioned in an acceptable way and with the injured person's best interests in mind. The work done by Mercer for the Committee and referenced earlier in this report confirmed these impressions. The Review Committee concluded that many of the problems which had given rise to negative public sentiment had arisen in the first few years of after the changeover from the pre-1995 tort system. This point also is considered elsewhere in the report.

In light of these conclusions, it was the Committee's view that the initial process of making a claim for Personal Injury Protection Plan benefits should not be encumbered with a second client-oriented advisor. This would duplicate and complicate the role of the Personal Injury Representative and might well put injured persons into an adversarial position with SGI from the outset. It was thought preferable that there be continued development and training for Personal Injury Representatives with respect to all aspects of their role, and in particular customer relations and customer service.

A Personal Injury Advisory Office

The Review Committee recommends the creation of a personal injury advisory office. This office would be a resource for persons seeking benefits, but would mostly function as a secondary service if relations between the injured person and SGI broke down. If this situation developed, an advocate could help an injured person make sure there have been no errors in the handling of the claim, and ensure the person understood the scope of the legislation.

Whatever dispute resolution processes are available under the Plan, the advocate would help the injured person through those processes. Although legal and health care expertise might be necessary at this point, counselling, negotiation and interpersonal skills would be of primary importance. The office would employ persons with a range of specialities as well as persons who have an interdisciplinary background.

If the issue has enough merit to proceed in the appeal process, the advocate could direct this person on the appeal process and what type of information would be needed to proceed. In addition, the office might make a staff lawyer available to handle the appeal, much like is done with legal aid, or the office may contract out to lawyers practising in the field. Care would have to be taken that the process is not delayed by these advisory mechanisms.

Independent Personal Injury Tribunal

The Committee concluded that a specialized tribunal should be established to handle third-stage appeals related to the Personal Injury Protection Plan, similar to Manitoba and Quebec. This approach would be consistent with a general trend in the legal system both in Canada and world wide toward specialization in decision making. Such a move is also a natural progression from the dispute resolution mechanisms recommended by the Committee for the second stage in the appeals process.

One potential problem of tribunals is their independence or perceived independence. There sometimes seems to be too close a connection between the decision making body and one or other of the institutions which is party to the action or which has been involved in an investigative process. The Review Committee recommends that the Saskatchewan tribunal be created which is completely independent from SGI and which reports to a different Minister of the Crown. Whether or not it should be independent from the personal injury advisory office may be a matter of debate, but it should certainly be free of any connection to SGI.

The personal injury tribunal might draw on expertise from outside the legal profession as well as from within it. Its structure and competency range needs to be carefully worked out. For example, it needs to be recognized that one of the parties to the dispute will be a Crown corporation. The tribunal would, of course, be provided with specific terms of reference and required to keep its decisions within the boundaries of the Personal Injury Protection Plan legislation. However, a model might be developed which anticipates the possibility that this stage of dispute resolution in the automobile accident field would merge with the workers' compensation appeal mechanism. Indeed, if Saskatchewan were one day to co-ordinate its personal injury compensation systems into a unified whole, a tribunal such as the one that is recommended by the Committee would be one on which a more universal system could build.

Manitoba created an Automobile Injury Compensation Appeal Commission (AICAC) to handle appeals related to the Manitoba Public Insurance Personal Injury Protection Plan. In Quebec, appeals are to the Administrative Tribunal, although the Administrative Tribunal does not solely hear appeals related to the no-fault system.

The Appeal Commission in Manitoba is:

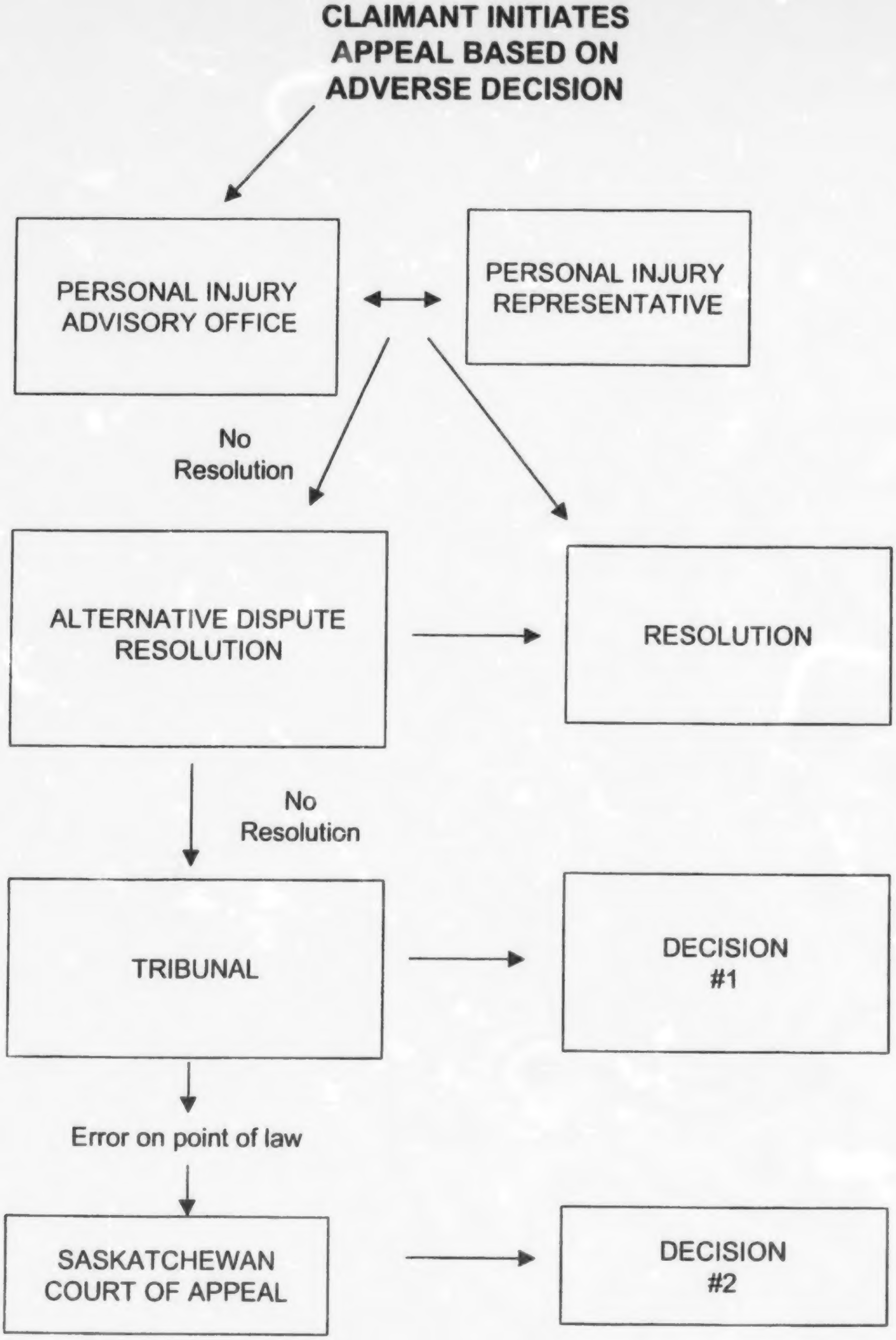
- Independent of Manitoba Public Insurance;
- Less intimidating than a court of law;
- Composed of three independent individuals who listen to an injured person's concerns and ensure that he or she has been treated fairly; and,
- Accessible without charge to the individual, unless the injured person wants representation by a doctor or lawyer.

The cost of the commission is approximately $600,000 annually, and this cost to the government is reimbursed by Manitoba Public Insurance. The Review Committee understands that the Commission has experienced a number of challenges, notably:

- Commission members find that they must do a lot of "hand holding" to assist the injured person in the process;
- Since there is no cost to the injured person in making the appeal, frivolous claims can be presented to the Commission; and,
- Delays have been experienced in hearing appeals.

In structuring its own tribunal, Saskatchewan can learn from these problems.

The following diagram illustrates the proposed appeal structure:


CLAIMANT INITIATES APPEAL BASED ON ADVERSE DECISION
PERSONAL INJURY ADVISORY OFFICE
PERSONAL INJURY REPRESENTATIVE
No Resolution
ALTERNATIVE DISPUTE RESOLUTION
RESOLUTION
No Resolution
TRIBUNAL
DECISION #1
Error on point of law
SASKATCHEWAN COURT OF APPEAL
DECISION #2

Implications

Legislation and Regulations

Changes to legislation and regulations will be required to implement this recommendation.

Cost

The cost of implementing this recommendation will depend on the level of resources provided to establish the various structures involved and the level of demand for the services. With the Manitoba experience as a reasonable starting point, the cost of the tribunal could be in the order of $600,000 annually. The cost of an advisory office would be separate, and may be in the order of $300,000 annually. The cost of enhancing alternate dispute resolution mechanisms should not be extensive, but may reach $100,000 annually. In total, then, the new appeals and advocacy structure may cost in the order of $1 million annually with a conservative approach to staffing and with an expectation that the volume of use will be at a moderate level.

"The Committee concluded that a specialized tribunal should be established to handle third-stage appeals related to the Personal Injury Protection Plan, similar to Manitoba and Quebec. This approach would be consistent with a general trend in the legal system both in Canada and world wide toward specialization in decision making."

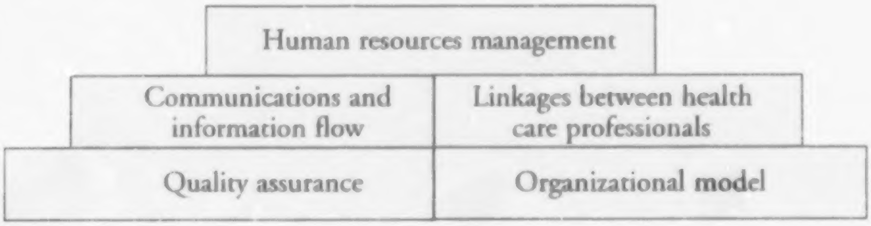
Underlying Integrity of the Service Delivery System

The service delivery system for the Personal Injury Protection Plan needs to have a foundation that supports it. The Committee considered aspects of five underlying processes:

- Human resources management, including Personal Injury Representative recruitment and training and management/support;
- Organizational model for service delivery, including the Personal Injury Representative as the focal point;
- Communications and information flow, including public education and awareness around program content and reasonable expectations;
- Linkages between health care professionals; and,
- Quality assurance, including performance of Personal Injury Representatives, contractor, and service providers.

These processes are broader than the five discrete processes addressed earlier in this chapter.

Underlying processes of the service delivery system


Human resources management
Communications and information flow
Linkages between health care professionals
Quality assurance
Organizational model

Human resources management

Recommendation

That SGI continue to enhance its human resource management approach in the Personal Injury Protection Plan, including:

(1) Recruitment with a focus on attitudinal strengths and competencies in line with the characteristics of a good Personal Injury Representative;

(2) Training with an enhanced focus on service considerations, including demonstrating understanding, sensitivity, and compassion for injured persons;

(3) Addressing workload assignment and distribution issues for Personal Injury Representatives, specifically in rural and northern areas where significant travel is involved and the Personal Injury Representative plays a key communications role for the Personal Injury Protection Plan; and,

(4) Providing effective supervisory support to the Personal Injury Representatives.

Current Situation

The human resources dimensions of the Personal Injury Protection Plan are an extremely important factor in the ability of SGI to be effective in serving injured persons. The central component of the human resources considerations is the Personal Injury Representative, the key individual in managing claims and working with the injured person.

Commentary

The Committee looked at documented Personal Injury Representative roles and responsibilities, recruitment, training, internal support, and performance measurement and management. We also considered the perspectives of Personal Injury Representatives through direct contact with more than 20 of them.

The Committee considered a number of aspects of human resource management relevant to the effectiveness of the Personal Injury Protection Plan and provides comments on them in the following paragraphs.

Personal Injury Representative roles and responsibilities

SGI provided the Committee with the current job descriptions for Personal Injury Representative levels I, II, III, and Specialist. The general nature of work for each of the four positions is as follows:

- *Personal Injury Representative I:* monitoring, evaluating and coordinating benefits for less complex injury claims.
- *Personal Injury Representative II:* monitoring, evaluating and coordinating benefits for more complex injury claims.

- ***Personal Injury Representative III:*** day to day supervision, operation and control of a PIPP unit – including counselling, supporting, training, monitoring and assisting subordinate staff in all procedural and technical aspects of their duties.
- ***Personal Injury Representative Specialist (Catastrophic):*** monitoring, evaluating and coordinating benefits for claims involving catastrophic injuries.

As an individual progresses from one level to another, he or she is expected to deal with more complex and senior responsibilities – for example:

- Redefining rehabilitation plans in consultation with treating practitioners;
- Assigning the services of consultants assisting with rehabilitation;
- Representing the interests of the corporation at mediations;
- Auditing claim files to ensure that the quality and quantity of work performed meets expected standards of performance; and,
- Reviewing claim files to ensure that claims are proceeding according to established protocols and procedures).

The Committee concluded that the roles and responsibilities of Personal Injury Representatives as they are being refined by SGI are essentially appropriate and that the corporation's use of the Personal Injury Representative position as the centrepiece of an injured person's relationship with the corporation is effective.

Personal Injury Representative recruitment

SGI has defined knowledge, skill, and ability requirements for Personal Injury Representatives and is continuing to refine these over time. For example, the minimum requirements for a Personal Injury Representative III include:

- *Knowledge:* Thorough knowledge and understanding of the terminology and treatments related to vocational and medical rehabilitation principles.
- *Skills:* Superior level skill in developing positive customer relations by making efforts to listen and understand and by anticipating and providing solutions to customer needs.
- *Abilities:* Demonstrated ability to make decisions based on medical and psychosocial information and logical assumptions.

Minimum educational/training requirements for each position have been defined as follows:

Requirements*	**PIR I**	**PIR II**	**PIR III**	**PIR Specialist**
AIIC	2 courses	2 courses	4 courses	2 courses
Seneca College	1 course towards a Certificate in Rehabilitation Benefits Administration	4 courses towards a Certificate in Rehabilitation Benefits Administration	5 courses to complete Certificate in Rehabilitation Benefits Administration	4 courses towards a Certificate in Rehabilitation Benefits Administration

* *As stated or an equivalent combination of training and experience*

Recruitment of Personal Injury Representatives has been historically from internal sources, and very few of the current Personal Injury Representatives have come into Personal Injury Representative positions from external to SGI. The majority are individuals that have been with the corporation for their entire careers (e.g., more than 30 joined SGI prior to 1980).

Constraints of collective agreement

The current collective bargaining agreement between SGI and SIOPEU Local 397 requires SGI to post positions internally before recruiting from external to the corporation. The agreement also poses restrictions in the areas of reclassification of existing positions, requiring a joint process.

For posted competitions, in filling vacancies or making promotions, the agreement requires that "the applicant who is qualified and has the most seniority shall be given preference. To be considered qualified, an applicant must meet the minimum requirements as set forth in the Position Classification Plan."

The result is that it is extremely difficult for SGI to recruit to Personal Injury Representative positions from external sources, limiting the corporation's ability to bring in fresh perspectives and attitudes.

Interviews with prospective Personal Injury Representatives

SGI provided the Committee with copies of materials used for interviewing prospective Personal Injury Representative candidates. The interview guides take a behavioural approach, requiring candidates to describe actual situations, actions, and results to demonstrate their skills (e.g., interpersonal, communication, guiding/influencing, developing customer relationships, and problem-solving). This approach is useful, and the Committee believes it could benefit from being extended to test more attitudinal characteristics that are central to working effectively with injured persons.

Personal Injury Representative competencies

The Committee recognized that following the career path model within SGI, the corporation has managed to build a strong contingent of Personal Injury Representatives with extensive knowledge and experience. However, the current model for recruiting/promoting Personal Injury Representatives makes it difficult for SGI to bring in experience from the outside to enhance the organization's breadth and depth of experience.

A key competency needed in Personal Injury Representatives is a strong people/service focus. This *attitudinal* factor is more important from a recruitment perspective than technical skills and knowledge, since these can be developed well through training and experience.

Another key competency is the professionalism demonstrated by the Personal Injury Representative in performing his or her responsibilities. While the Personal Injury Representative is not a professional in the traditional sense, he or she should nevertheless practice professional conduct. Specifically, he or she should be capable of sound judgement and be grounded in a strong sense of ethics. Professionalism can be reasonably viewed as being more about behaviour than it is about credentials.

Organizations that are necessarily customer service focused have learned to "hire attitude" and teach skills. The Committee suggests that SGI consider this approach as it continues to refine the Personal Injury Representative role definition and its recruitment process.

Personal Injury Representative Training

Training of Personal Injury Representatives has been evolving since before the Personal Injury Protection Plan was implemented in January 1995. In the fall of 1994, SGI conducted a training session for Personal Injury Representatives that focused on the change in legislation, the change in philosophy, and the implications for the Personal Injury Representatives in fulfilling roles and responsibilities.

The current **Training Catalogue** (September 2000) indicates the availability of a broad array of training opportunities, from technical aspects (e.g., 180 Day Determination, Early Intervention Program, PIPP Legislation Refresher, Medical Terminology) to service-oriented aspects (e.g., Interviewing Techniques, Customer Service, Diversity: Respecting Differences, and Defusing Hostile Customers).

Personal Injury Representatives are also to complete designated courses offered by the Insurance Institute of Canada and Seneca College (Certificate in Rehabilitation Benefits Administration). These courses cover subjects including principles and practice, bodily injury claims, vocational rehabilitation concepts, and interviewing and counselling.

Since the implementation of the Personal Injury Protection Plan, SGI has identified "skill gaps" in technical and personal development of Personal Injury Representatives. To address these gaps, SGI has recently structured a program of ongoing training, with courses delivered in a module format:

Technical	**Personal development and customer service**
PIPP legislation*	Effective business writing*
Income replacement benefits*	Negotiating skills
Early intervention program*	Interviewing techniques Medical terminology*
Customer service*	Residual capacity evaluations*
Defusing hostile customers*	Tort claims Statement taking*
Acquired brain injury and spinal cord injury guidelines	Stress management

** mandatory for new Personal Injury Representatives*

SGI indicated to the Committee that it is planning to launch a new, corporate-wide customer service training program to provide training which focuses on customer service from the customer's point of view. This training will be mandatory for all staff.

The Committee heard from Personal Injury Representatives that the training they had before commencing their Personal Injury Representative duties varied fairly significantly from one to another. This appears to have been due to a number of factors, including:

- The fast track approach that was used to put Personal Injury Representatives in place to handle claims starting in January of 1995 and later to deal with workload situations;
- Recognizing previous experience of Personal Injury Representatives in adjusting work either in SGI or in another insurance company;
- Dealing with the challenges of training personnel who are to be located in a fairly large number of locations in the province; and,
- Changing/evolving views on the appropriate training approach for Personal Injury Representatives.

The training of Personal Injury Representatives must cover the bases involved in a comprehensive training framework:

- *Technical knowledge and skills:* for example, insurance principles, adjudication and case management.
- *People knowledge and skills:* for example, interpersonal relations, communications, and customer service.
- *Administration and finance:* for example, internal policies and procedures, claim file management, and benefit calculation.
- *Legal aspects:* for example, legislation and regulations, confidentiality of personal information, and formal appeal processes.

The weighting of these aspects depends on the needs of the individual Personal Injury Representative being trained. The Committee noted that SGI is moving to place more emphasis on the people aspects, including customer service. Given the concerns that the Committee heard from injured persons, this is clearly an appropriate approach.

Another training consideration is the knowledge and skills required of an individual at various points in the process. For example, before starting work as a Personal Injury Representative, an individual should have been effectively oriented to the working context and expectations. Once working as a Personal Injury Representative, individuals should have continuous access to professional development consistent with Personal Injury Representative work requirements, and refresher orientations should be available as well. In some cases, people will bring other relevant skills and knowledge to their Personal Injury Representative work, and this should be recognized appropriately.

The Saskatchewan Physiotherapy Association recommends that Personal Injury Representatives have training that addresses:

- *Procedures for delivering the program;*
- *Qualifications of care providers;*
- *Requests for reporting;*
- *Communication with providers;*
- *Public relations;*
- *Improved understanding of what secondary treatment involves; and.*
- *Improved understanding regarding functional programming versus symptom resolution.*

A physician indicated to the Committee that SGI staff need to be (a) trained on how to interact with people suffering from chronic pain and (b) educated about chronic soft tissue injuries, especially that of whiplash, *"so they can appreciate what the patient is going through as a client."*

The interaction of these and other individuals with the Personal Injury Representatives and the Personal Injury Protection Plan provides an external perspective that may have value for SGI in assessing the need for training programs. The Committee suggests that SGI welcome such suggestions from external stakeholders and consider them in the context of the ongoing review of training needs by both Human Resources and Personal Injury Protection Plan staff.

Personal Injury Representative performance measurement and management

SGI provided the Committee with information on the performance management of Personal Injury Representatives. The corporation reviewed and revised its performance management system in the past year. Two major changes were made: a new performance appraisal document and a new structured claim file review process.

The claim file reviews, to be done twice annually, are to be a key tool for the Personal Injury Representative III personnel in monitoring the performance of Personal Injury Representatives. The files are to be examined to determine whether customer service, claims handling, and administration targets/standards are met or not met. Examples of the standards are as follows:

Customer Service	Claims Handling	Administration
PIPP benefits are fully explained to the customer Changes affecting benefits are communicated verbally by Personal Injury Representative, followed by a letter, which is registered/certified and contains appeal information Caring, integrity and innovation are demonstrated in the claims service provided to the customer	The customer's eligibility and benefits entitlement has been fully investigated and all legislated and regulatory benefits are provided BF's (Bring Forward system) are used to monitor the progress of rehabilitation	On line notes document the main point of discussions with customers and the people associated with the rehabilitation and claim file management Eligibility and benefit entitlement documentation is complete Internal and external resources are involved as required for good claim file management

The Committee through the course of its review was consistently concerned that injured persons be treated with respect and compassion, and the Personal Injury Representative is central to this objective being accomplished. From the documentation provided and from discussions with SGI personnel, it is apparent that SGI recognizes the importance of this aspect of the Personal Injury Representative's work, and is placing increasing emphasis on it in the measurement and management of Personal Injury Representative performance. Similar to other features of the Personal Injury Protection Plan, this is an area that is continuing to evolve as SGI gains more experience and as it assesses the need for change in its human resource management practices.

Supervisory support for Personal Injury Representatives

SGI has generally dedicated the senior Personal Injury Representatives to play a supervisory support role, providing guidance and advice and monitoring the performance of Personal Injury Representative II and Personal Injury Representative I staff.

The nature of the Personal Injury Protection Plan is that few cases will fit a defined standard. A variety of situations and issues will arise depending on the injured person and his or her circumstances. The Personal Injury Representatives must be adept at dealing with the wide variety of situations, but cannot be expected to handle them all without advice and guidance. The supervisory support role is therefore key to effective Personal Injury Representative performance.

The Committee was made aware that the access to senior Personal Injury Representatives varies across the province due to the level and distribution of resources. Senior Personal Injury Representatives are generally located in the largest centres, and provide support to other locations remotely with occasional on-site visits. This is inevitable given the limited Personal Injury Representative presence in some locations.

In discussions with Personal Injury Representatives at the I and II levels, the Committee heard how important this access to senior staff is and how difficult it is generally to have the extent of access or immediacy of access that they would like to have. The senior Personal Injury Representative IIIs also expressed concern about workload constraining their ability to provide advice and guidance to the Personal Injury Representative II and I staff.

The Committee recognized that SGI was aware of this issue and that alternative approaches may ease the Personal Injury Representative concerns. For example, more structure may help to schedule access more evenly. Another alternative may be to look for administrative workload that might be shifted from the senior Personal Injury Representatives to other SGI staff. With the increasing focus on performance measurement and management for Personal Injury Protection Plan staff, SGI will necessarily consider how best to deal with the supervisory support issue.

Personal Injury Representative resource levels and workload

The workload of Personal Injury Representatives varies by position and location. By position, the expectations established by SGI are approximately 50 claim files for a Specialist, 90 for a Personal Injury Representative II, and 150 for a Personal Injury Representative I. The corporation considers these numbers to be comparable to 300 claim files per person in the pre-PIPP environment. Significant additions in Personal Injury Representative resources were made in 1995, and other additions have been made over the past five years.

Claim files are shifted as required to help Personal Injury Representatives manage workloads, but it is difficult to equalize loads across the branches. Although it is not clear if it is workload or the nature of the work that is the primary issue, stress and burnout are not uncommon across the Personal Injury Representative group, with quite a number of stress leave situations. In these cases, temporary staff are brought in to help with the workload.

The Committee was informed of instances where Personal Injury Representative I level staff members were handling more than 200 claim files each and Personal Injury Representative II level staff members were handling more than 100 files each. Generally, the Committee was informed by the Personal Injury Representatives that workloads were well above the targets set by SGI. Higher workloads appear to be particularly difficult to manage in rural locations because of the travel requirements for Personal Injury Representatives.

Resource levels and workload management are both major factors in the ability of the Personal Injury Representative group to deliver good service to injured persons. SGI is clearly cognizant of this reality, and will need to make adjustments to respond to specific situations as they arise.

One mechanism that may serve to support more effective workload distribution and management is to assess the complexity/severity of the claim as part of the claim assignment process. This would help SGI to avoid some Personal Injury Representatives getting an unmanageable load of more difficult, time-consuming claim files. The Committee suggests that SGI look at this approach and consider its applicability to the Personal Injury Protection Plan.

The Committee also suggests that workloads be adjusted for Personal Injury Representatives in rural and northern areas who have a significant travel burden in order to do their work effectively.

Summary Conclusion

SGI has faced significant challenges in the area of human resource management in setting up the Personal Injury Protection Plan and establishing the Personal Injury Representative role. The corporation has endeavoured to improve this area over time, in the number of resources, the recruitment of Personal Injury Representatives, the training and development of those resources, and the performance management of the individuals providing service. In the view of the Committee, the corporation has a strong foundation from which to build an even better delivery system.

Implications

Legislation and Regulations

No change in legislation or regulations is necessary to implement this recommendation.

Cost

The financial impact of implementing this recommendation will depend on the costs involved in enhancing and expanding Personal Injury Representative training, and the potential addition of resources to deal with workload issues.

"The Committee concluded that the roles and responsibilities of Personal Injury Representatives as they are being refined by SGI are essentially appropriate and that the corporation's use of the Personal Injury Representative position as the centrepiece of an injured person's relationship with the corporation is effective."

Organizational model for service delivery

Recommendation

That SGI continue to use the current organizational framework centred on the Personal Injury Representative position and modify it as appropriate to better serve the needs of injured persons.

Current Situation

The current organizational model for service delivery under the Personal Injury Protection Plan incorporates a number of features:

- The Personal Injury Representative is the focal point for management, communications, and client contact. SGI has increased staffing levels in the claims injury area from a pre-PIPP level of 59 to a total of 89 at the end of 1999;
- A central calculation team working in Head Office uses an automated system to calculate the income replacement benefit, which streamlines this aspect of determining benefits for the injured person;
- Written procedural manuals have been developed to guide and direct Personal Injury Representatives in performing their work; and,
- Personal Injury Representatives located at SGI offices throughout the province have access to advice and support from senior staff in the major offices in Saskatoon and Regina.

The Personal Injury Representative position is the organizational element that is key to the effective functioning of the Personal Injury Protection Plan processes of application for benefits, adjudication, case management, rehabilitation and medical management, and appeals and advocacy.

Commentary

The Committee considered the appropriateness of this service delivery model, with particular attention to how well it meets the needs of injured persons who are interacting with the Plan.

Ease of use by the injured person was a primary consideration. The Committee agreed that with SGI's assignment of a Personal Injury Representative and continuity of contact through that person, the injured person has a straightforward means of dealing with the insurer – a one-stop approach. To have a comparable point of contact with the health care system, the injured person chooses a primary caregiver, who may be a physician, chiropractor, or physiotherapist. With the Personal Injury Representative and the primary caregiver, the injured person should therefore have the benefit of a two-person "team" to help them through the claim and rehabilitation processes.

Implications

Legislation and Regulations

No change in legislation or regulations is necessary to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

Communications and information flow

Recommendation

The Committee recommends that SGI undertake to review its communications approaches and messages and endeavour to increase and improve:

(a) the public's understanding and expectations of the Personal Injury Protection Plan;

(b) the flow of information to injured persons and management of their expectations throughout the course of their claim experience; and,

(c) the education of health care providers, including the reinforcement of the research and evidence on which the Early Intervention Program is based.

Current Situation

SGI has established standards for communications with injured persons and articulates them in its internal manual:

- Upon receipt of an assigned claim file, the Personal Injury Representative is to make personal contact with the injured person within two working days.
- If an income replacement benefit is involved, the Personal Injury Representative should conduct a personal interview with the injured person within five working days after the first contact.
- The Personal Injury Representative is to keep in touch with the injured person on an ongoing basis and, where possible, do this with face-to-face meetings.
- Personal Injury Representatives should be in contact with injured persons at least every 30 days for the first three months, and every 30-45 days thereafter.

Communications and information flow is also key to education and awareness-building for people who interact with the Personal Injury Protection Plan in some way. When SGI was launching the Early Intervention Program, the corporation made a major effort to education primary health care professionals about the clinical practice guidelines on which the program is based. The program was in fact officially approved by the Saskatchewan Medical Association, the Chiropractors' Association of Saskatchewan, and the Saskatchewan Branch of the Canadian Physical Therapy Association.

Finally, communications and information flow to the general public about the Personal Injury Protection Plan are important to increasing and improving public understanding of the Plan and how it works.

Commentary

The Review Committee heard a range of experiences related to communications and information flow – some excellent, with high levels of satisfaction, and some very poor, with high levels of dissatisfaction. From the Personal Injury Representatives we heard that ongoing proactive communications were constrained by workload and limits on time available for this activity.

With respect to the primary caregivers, it is apparent that the front-end educational effort made by SGI requires follow-up and continuous "refresher" measures. If health professionals are not implementing the established guidelines, they are either unfamiliar with them or deliberately elect to ignore them.

On a broader basis, through the course of the review, the Review Committee became aware of a high degree of misunderstanding, misinformation, and wrong assumptions about the Personal Injury Protection Plan among the general public. Despite the availability of information when purchasing insurance coverage annually, members of the public appear to choose to be largely uninformed about the Plan and its application.

This essentially passive approach is difficult to address, particularly given the criticism levelled at SGI when it undertakes broad communications efforts to improve understanding. The passive approach also leads to difficulties in claim situations when expectations of injured persons are not realistic. For example, injured persons may have unrealistic expectations that their injuries will be "fixed" and will become frustrated and angry when these expectations cannot be met.

The Review Committee heard from some individuals that SGI's communications efforts during the introduction of the Personal Injury Protection Plan were inadequate and therefore partly responsible for the degree of confusion about what this new system meant. The Review Committee also heard that it was important to communicate continuously in order to build and sustain knowledge and understanding, including for new drivers in the province.

The Committee agreed that effective communications are central to the effective operation of the Personal Injury Protection Plan, including:

- Ongoing educational communications to the public (e.g., through driver education programs) and to health care providers;
- Ongoing informational communications to the injured person; and,
- Increasing public awareness and understanding of the Plan, including the responsibility of individuals who are injured.

Implications

Legislation and Regulations

No change in legislation or regulations is necessary to implement this recommendation.

Cost

The financial implications of implementing this recommendation will depend on the cost of communications efforts, particularly those directed at the general public.

Linkages

Recommendation

That as part of its ongoing operations, SGI routinely assess the effectiveness of the linkages required at the various points of the claim and rehabilitation process and as an educational and advisory process, communicate with health professionals on what are clearly "best practices". This is particularly important for the secondary and tertiary programs and their linkage with the primary caregiver.

Current Situation

Linkages between health care professionals are extremely important to the operation of the Personal Injury Protection Plan and are key to the effective coordination and support of an injured person's rehabilitation and recovery. Particularly in complex and/or long-term cases, several different health care professionals will likely be involved in the rehabilitation and medical management process. As a result, a significant amount of information will need to be communicated among these practitioners and the insurer related to diagnosis, assessment, treatment, and progress.

Commentary

The Committee heard from both injured persons and health care providers of many instances where the linkages between health professionals need improvement. However, we also learned of mechanisms being put in place to address this issue. For example, the Committee was informed that secondary treatment programs send a form letter to the primary caregiver of the injured person about the start of secondary treatment. As evidenced by this example from a secondary centre, the letter informs the health professional of the basic content of the program and directly asks for the individual's involvement and support:

> *"It is important for us to receive your input regarding special considerations for the client to allow us to develop the most appropriate treatment. Also, it is imperative that we show a team approach to the client and to this end we would appreciate it if you would support the position of the secondary treatment team and encourage your patient to put maximum effort into the secondary program."*

The Committee noted that generally, linkages between health care providers, particularly the fullness and timeliness of communication, appear to be improving. A contributing factor is likely the increasing understanding and acceptance of the value of a multi-disciplinary team approach to helping injured persons.

However, the Committee was concerned that where there continue to be ineffective linkages between health care providers, they can have a direct and negative impact on the injured person's rehabilitation and recovery. As a result, the Committee considers that SGI must be proactive in this area and take responsibility as the insurer to help improve the linkages through educational and advisory efforts. As a matter of priority, the Committee recommends that the corporation focus on linkages between the health care providers involved in secondary and tertiary programs and the primary caregiver.

Implications

Legislation and Regulations

No change in legislation or regulations is necessary to implement this recommendation.

Cost

The financial implications of implementing this recommendation will depend on the extent of SGI's efforts in communicating with health care providers.

> **"The Committee agreed that with SGI's assignment of a Personal Injury Representative and continuity of contact through that person, the injured person has a straightforward means of dealing with the insurer – a one-stop approach."**

Quality assurance

Recommendation

That SGI expand its quality assurance mechanisms, including comparisons to industry standards and best practices.

That SGI work with service providers to develop appropriate service standards and monitor performance based on those standards.

Current Situation

Quality assurance includes a broad range of elements. In reviewing the Personal Injury Protection Plan, the Review Committee looked at the quality assurance tools of customer feedback, industry standards, and performance measurement and management of key personnel.

Customer feedback

SGI has tracked customer feedback and concerns related to the Personal Injury Protection Plan since the beginning in 1995. The corporation indicated to the Committee that customer satisfaction levels have been maintained at a level of 85% in the auto injury area, including the pre-PIPP period 1992-1994 and the PIPP period 1995-1999. The corporation has set a target of a 90% rating.

Service agencies are also tracking client satisfaction levels. For example, the FIT for Active Living Program provided the Committee with a copy of the results from the April to June 2000 period survey. A total of 73% of discharged clients from that period completed a survey, indicating:

- 22 of 28 clients were satisfied overall with FIT services (79% rate of satisfaction, up from 65% in the previous quarter); and,
- 6 of 28 clients expressed some level of dissatisfaction with the program.

Suggestions for improvement from clients included backup staff for staff that are on holidays, incorporating more passive options (e.g., massage), giving clients more information about how they are using muscles that have not been used, taking into account pain tolerance as well as pain management, and providing access to chiropractic treatments as part of the program.

The Committee also considered information from a survey of survivors and families that received services from the Acquired Brain Injury Outreach Team. Responses included the following:

- 78% of the family members who responded indicated that they felt that SGI handled their family members' claims with fairness and sensitivity;
- 83% of the survivors who responded indicated that they felt that SGI handled their claims with fairness and sensitivity;
- 100% of the family members and survivors who responded indicated that they felt the rehabilitation program handled their family members' cases with fairness and sensitivity, that they felt the rehabilitation program was beneficial, and that they were satisfied with the outcome of the rehabilitation;

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The Saskatchewan Central ABI Outreach Team in its submission to the Review Committee highlighted these responses to the question "What do you like best about the ABI Outreach Team?":

> *"I found them all dedicated, compassionate, genuine and skilled. Combine this with their great accessibility, and you've got a winning team."*
>
> *"They help with every aspect of your life. They also listen to what you say and take your opinions into consideration."*

One client's family wrote to the Outreach Team about the support and services they had received:

> *"It was like a ray of sunshine in a nightmare. You cannot imagine how stunned we were to realize that people were available to support and assist us … Our life has taken on a whole new demeanor. Where there was stress and anguish, we now have support and encouragement, which gives us hope for the continued recovery for our brother. The ABI team has met with our brother on a regular basis to assess needs, encourage him to become more independent and have been assisting us in coordinating a team of support for our brother and ourselves."*

The Committee also received the results of an evaluation of the ABI Pilot Project. Three of the many findings highlighted in the December 1998 report were as follows:

- A high level of satisfaction was evident amongst survivors and families with respect to the services and programs provided through the ABI Pilot Project;
- Coordination of services was regarded by clients, families and staff as more successful in urban areas than in rural areas due to what is considered to be scarce resources with respect to therapies, residential options, home care and vocational opportunities in rural and small communities; and,
- Clients, families and staff generally agreed that gaps in programming and service still remain with respect to residential options; appropriate resources for the treatment of substance abuse/additions for survivors of ABI; and, meaningful activity for those clients unable to return to full-time, competitive employment.

Generally, customer feedback appears to be a fundamental activity of these and other programs that provide services to injured persons for the Personal Injury Protection Plan. The quality of the feedback mechanism and the follow-up on responses are both important to making the feedback process meaningful for both the injured person and the service provider.

Industry standards and best practices

SGI, like other organizations, has access to a wealth of information on business practices, disability management, and human resources management. This information can be used to supplement the corporation's internal knowledge and experience and to assist in the setting of expectations for standards of performance. The corporation is well-positioned to benefit from the learnings of other organizations and should do so.

Performance measurement and management

The performance measurement and management of Personal Injury Representatives is central to SGI's quality assurance tools. By setting performance standards, monitoring performance, evaluating performance, and planning for improvement in performance, the corporation as manager can assist Personal Injury Representatives to excel in their work.

Commentary

SGI is proactive in obtaining customer feedback and distributing that feedback for consideration and appropriate follow-up.

With respect to industry standards and best practices, the Committee considers that SGI may have too much of an internal focus and a self-sufficiency approach to dealing with challenges as they arise. That said, it is evident that in some areas (as recognized in the Mercer report), SGI is leading the industry.

In performance measurement and management, particularly for the Personal Injury Representatives, SGI is advancing its human resources practices to improve this area.

Implications

Legislation and Regulations

No change in legislation or regulations is necessary to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

Conclusion – Process

The Review Committee concluded that the processes involved in the Personal Injury Protection Plan are generally sound, but found a number of areas require substantive improvement, notably the appeals process. The Committee also recommends improvements in the areas of case management and rehabilitation and medical management.

"The performance measurement and management of Personal Injury Representatives is central to SGI's quality assurance tools. By setting performance standards, monitoring performance, evaluating performance, and planning for improvement in performance, the corporation as manager can assist Personal Injury Representatives to excel in their work."

Chapter Five – **Service**

The Review Committee considered the service aspects of the Personal Injury Protection Plan in order to gain further understanding of the impact of the Plan and its effectiveness in serving injured people. Effective service can be defined according to the particular program, but necessarily encompasses some fundamental components, such as timeliness, courtesy, and ease of use.

SGI measures customer satisfaction through a Claims Customer Service Survey, and the Review Committee looked at a sampling of completed surveys. Injured persons are asked to indicate their level of satisfaction in a number of areas, including:

- The promptness of response to initial contact;
- The courtesy of staff;
- Personal Injury Representative explanation of the claim process and coverage;
- Personal Injury Representative ability to answer questions;
- Personal Injury Representative willingness to help;
- The promptness with which the claim was handled, including payments; and,
- The fairness of benefits.

The injured person is also asked how claims service could be improved.

SGI provided the Committee with the results of its claims customer service surveys conducted during the 1995-1999 period. During the five years, between 707 (1995) and 1,479 (Spring 1999) surveys were sent out and between 150 (1995) and 381 (Spring 1999) were returned, resulting in a response rate of 21% to 26%. The positive results (Good, Excellent, Very Satisfied and Somewhat Satisfied) ranged from 81% (1997) to 86% (1996), and has been stable at 85% through 1998 and 1999.

The surveys are sent to claimants selected randomly by SGI's computer system– from injury claim files closed in the three months prior to the surveys being generated. ***No surveys are sent to open injury claim files***, which the Committee identified as an issue. Many of the injured persons who contacted the Committee about their experiences are still considered to have open files and have not therefore been asked to complete a survey. The Committee suggests that for these longer term claims, the satisfaction of customers should be measured on an ongoing basis. SGI could modify its survey to deal with satisfaction on a "progress" basis in these instances.

The Committee heard comments from many injured persons respecting the service they had received from SGI. Some were very negative. For example, one individual said *"SGI no fault insurance receives an F on their report card."*

Other injured persons were very positive about their experience. For example, a number of people indicated that dealing with the Personal Injury Protection Plan was *"all round a good experience"*. One noted in particular that *"SGI has been very helpful and the adjuster answers many questions."* The Committee also heard from people who indicated they had mixed experience – for example:

> *"Our experience ... is incomplete. At first, hope and encouraged, SGI people appeared courteous, willing and concerned. Later total frustration, behind that façade we found absolute rigidity, the iron hand in the velvet glove, and got ... what I can succinctly call the Royal Run Around.*
>
> *We filled in lots of forms, talked to many people, in vain, were detoured and disregarded. There seem to be so many people involved, but not clear who took decisions and why there are so many employees and rules, rules never well explained to us."*

In considering the service issue, the Committee also took into account Mercer's findings on customer service. In the course of Mercer's review of 101 claim files, the firm found and commented on evidence of customer service performance:

> *"The customer service provided by SGI is excellent. The PIRs demonstrate concern with all aspects of a claimant's situation. They are very accessible by telephone and often develop friendly relationships with claimants. Even though written communication is standardized in content, it is personalized in greeting and overall tone.*
>
> *In general, we considered the extent and tone of communication, as well as the accessibility and service orientation of the PIRs, to be considerably superior to that commonly found in the group disability insurance industry.*
>
> *Enquiries are handled quickly, requests for approval of treatment are responded to within a day or two at most, and the file notes overall demonstrated an appreciation for the need to keep time frames tight."*

While it is important to note that Mercer did not interview any injured persons or PIRs when conducting its review, the claims files clearly documented substantive detail on activities related to communications and responsiveness.

In its manual **Personal Injury Protection**, SGI states its mission statement for the Plan to guide employees in their work:

> *"We provide quality claim service to Saskatchewan people injured in a motor vehicle accident. In providing these services, we will help our claimants by: (1) supporting the rehabilitation process so that victims recover to the fullest extent possible from their injuries; and (2) ensuring that they are informed of, and receive all benefits to which they are entitled."*

The corporation also defines its claims philosophy, indicating that its claims processes and procedures will be based on:

- A service-driven, personalized, responsive, accessible, and professional claims organization;
- The efficient and cost-effective delivery of compensation to all eligible victims;
- A pro-active approach toward rehabilitation, maximizing the level of functional independence for all victims, especially the catastrophically injured; and,
- The prompt detection, deterrence, and prevention of illegitimate or fraudulent claims.

SGI has established nine customer service targets:

- Respond to all new claims the same day;
- Ensure that injury benefits are fully explained;
- Ensure that changes to benefits are explained verbally, followed by a letter;
- Reimburse expenses immediately;
- Ensure income replacement commences within 14 days of date reported;
- Authorize recommended rehabilitation and/or treatment expenses for new claims within one day of initial interview;
- Respond to telephone inquiries the same day received;
- Respond to written letters within five working days of receipt; and,
- Visit hospitalized/immobilized customers within three working days of the claim being reported.

The Committee focused particular attention on the adjectives "personalized", "responsive", "accessible", "professional", and "pro-active" in looking at the service delivery function. A number of other characteristics were also highlighted in the review. We have organized the service review matters under two broad headings: "focus on the individual" and "making it easy". We describe our findings accordingly.

"Our experience ... is incomplete. At first, hope and encouraged, SGI people appeared courteous, willing and concerned. Later total frustration, behind that façade we found absolute rigidity, the iron hand in the velvet glove, and got ... what I can succinctly call the Royal Run Around."

Focus on the Individual

A fundamental service theme for the Plan must be a focus on the individual. Within this broader theme, the Committee considered five key features:

1) Customization – each case on its own merits;

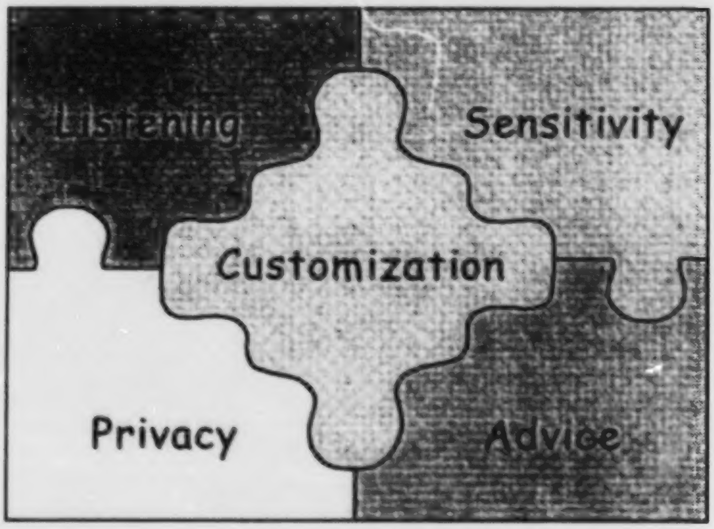
2) Listening – a primary communications activity with each individual;

3) Sensitivity – an attitude of compassion and respect for the individual;

4) Privacy – confidentiality and trust with information about the individual; and,

5) Advice – guiding the individual through the process according to his or her unique needs for information and assistance.

Characteristics of service that focuses on the individual



Customization – each case on its own merits

Recommendation

That SGI reinforce in its Personal Injury Representative training that the Personal Injury Representative is responsible for helping the individual claimant to understand that the corporation recognizes and respects that each injured person's situation is unique, but that:

(a) aspects of each injury have some similarities;

(b) based on those similarities, SGI and the health care system uses some standardized (and proven) approaches; and,

(c) to the degree it is appropriate, these approaches will be applied to the individual's circumstances.

Current Situation

SGI recognizes that each individual claimant situation is different, but necessarily has a framework for dealing with the injured person that features some standard approaches within the limits of available benefits.

Commentary

The Committee heard from a number of injured persons who felt their individual circumstances had not been recognized appropriately by SGI. In the words of a couple who made a presentation to the Committee at a public consultation session,

> *"SGI, from the President on down, should treat persons with respect, dignity and offer them a friendly, meaningful relationship built on communication, trust and respect … Each person's claim should be looked at individually, and with all aspects of their life taken into consideration …"*

Another couple presented to the Committee and offered these comments:

> *"Our son was severely injured in an automobile accident. He sustained massive head injuries and was in a coma for several months … SGI was there for us … they have looked at our situation as unique and individual and supplied us with what we needed."*

Some injured persons indicated to the Committee that they felt they had been subjected to a "cookie cutter" approach by SGI and by the rehabilitation process. This is the likely result of three factors:

- The rigor of the process for secondary and tertiary assessment, which some injured persons find very difficult;
- The use of a standard series of steps that have been proven effective in helping the rehabilitation and recovery process for injured persons – within the framework of the Early Intervention Program and guidelines for the duration of specific disabilities; and,
- The application of insurance principles to a claim situation to ensure that due process is followed in adjudication and the provision of benefits.

While recognizing the validity of these standardized approaches, the Committee also noted the importance of "customizing" each situation to ensure that each injured person is treated appropriately with respect to his or her individual circumstances. However, the Committee acknowledged that this customization would have to be accomplished within established boundaries to benefits, which would have to be effectively communicated to the injured person.

The Committee concluded that the Personal Injury Representative is key to ensuring that recognition of the unique circumstances involved in each injury is a primary consideration in providing effective service to the individual. Accordingly, the Committee determined that SGI should reinforce in its Personal Injury Representative training that the Personal Injury Representative is responsible for helping the individual claimant to understand that the corporation recognizes and respects that each injured person's situation is unique, but that: aspects of each injury have some similarities; based on those similarities, SGI and the health care system uses some standardized (and proven) approaches; and, to the degree it is appropriate, these approaches will be applied to the individual's circumstances.

Implications

Legislation and Regulations

No change to legislation or regulations is required to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

> **"Our son was severely injured in an automobile accident. He sustained massive head injuries and was in a coma for several months ... SGI was there for us ... they have looked at our situation as unique and individual and supplied us with what we needed."**

Listening

Recommendation

That SGI reinforce, through training and support, the need for PIRs to make listening a priority in their dealings with injured persons.

Current Situation

SGI expects its staff to be effective communicators and to practice excellent communications when dealing with clients. Listening to an injured person to understand the individual's situation and how he or she feels about it is central to the communications process.

Commentary

The Committee found that some injured persons, particularly those experiencing chronic pain, need to have someone listen to them respectfully and patiently while they fully explain their circumstances and how they feel about what has happened to them. It became clear through our contact with hundreds of individuals that some of those injured felt no one had really listened to them before. It also became clear through this process that listening to these experiences is very time-consuming. The time is particularly significant when the interaction with the Personal Injury Protection Plan has taken place over several years, involving many exchanges of information and many steps in the rehabilitation process.

Two groups of people need to ensure that they take the time to listen to injured people: health care providers, and the Personal Injury Representatives.

The Committee recognizes that listening is not always easy and may not always been seen as "productive". However, as a number of injured persons indicated to us, they "want their day" and want someone to listen to them. The Committee senses that the insurer and health care provider are necessarily and routinely focused on conveying information and advice to the injured person and that listening is sometimes, understandably, a secondary consideration.

Implications

Legislation and Regulations

No change to legislation or regulations is required to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal, although it will likely mean more Personal Injury Representative time spent with injured persons.

Sensitivity

Recommendation

That SGI continue to emphasize, through training and support, the need for PIRs to be consistently sensitive in their dealings with injured persons, and that this include specific attention to cultural sensitivity.

Current Situation

An attitude of compassion and respect for the individual is expected from PIRs in all dealings with injured persons. For particularly sensitive situations, SGI recognizes in its internal manual that when dealing with claimants when a death is involved, "the utmost compassion, discretion and courtesy is to be extended".

Commentary

The Committee heard from injured persons who felt that SGI had not been sensitive to their situations and individual needs. We heard comments attributed to PIRs that were clearly inappropriate and inconsistent with the expectations for Personal Injury Representative behaviour. In some instances, the injured person may have in fact misunderstood or misinterpreted what he or she heard, but if he or she was left with the impression that the Personal Injury Representative was insensitive, the problem is real and needs to be addressed.

In the words of one injured person who spoke to the Committee,

> *"If SGI professes that their main mandate is to rehabilitate a person so they are able to resume their jobs or have a proper quality of life, SGI should try to work with the client to get the client to the right specialists and treatment.*
>
> *My adjuster worked against me, not for me."*

Of particular concern, the Committee heard from a number of injured persons about a lack of cultural sensitivity from their PIRs. For example, we heard of instances where individuals felt that they have been subjected to insensitive comments based on inappropriate attitudes or assumptions or stereotyping.

Recognizing that PIRs can often be involved in difficult interactions with injured persons who are distressed or angry and that they might say something inappropriate when under this type of pressure, the Committee nevertheless believes that professional behaviour by PIRs must be the order of the day. When a mistake is made that could reasonably upset or offend an injured person, the Personal Injury Representative should apologize to the individual.

Implications

Legislation and Regulations

No change to legislation or regulations is required to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

Privacy

Recommendation

That SGI use surveillance only when alternative methods are insufficient to obtain the information needed by the corporation.

Current Situation

Information on an injured person can be very personal, and is to be treated with respect and confidentiality.

The use of surveillance is a particularly sensitive one, dealing quite forcefully with the privacy of the individual. Surveillance is a tool used by the corporation when fraud is suspected. As indicated in the Personal Injury Protection internal manual,

> *"The Personal Injury Protection Plan is intended to provide an accessible, humane and customer-driven service in response to the human and economic costs of automobile accidents. However, we must also recognize our financial responsibility to the public and will seek to do the utmost to detect, stop and deal with fraudulent claims at the earliest opportunity, and to the fullest extent of the law.*
>
> *The adjuster is expected to be aware of the "early warning" signs of a fraudulent claim, and to take appropriate action."*

The SGI manual indicates that surveillance should only be used in limited circumstances:

- Serious questions about the validity of the claim;
- Disability appears unduly prolonged;
- Independent medical examination reveals a need for further investigation; and,
- The injured person cannot be contacted during normal working hours.

The actions to be taken by the Personal Injury Representative are:

- Contact the claimant in person and question him or her about the areas of concern, documenting answers to questions;
- If concerns remain after the claimant interview, consult with the branch manager or supervisor regarding possible referral to a bodily injury investigator;
- If a bodily injury investigator is brought in, continue communications with the investigator to ensure that both the investigator and Personal Injury Representative advise each other of any new developments; and,
- During the period of the investigation, continue to monitor the file and make payment of expenses or indemnities to the claimant unless given direction to the contrary by the branch manager or supervisor or bodily injury investigator.

Commentary

The Review Committee heard from a number of injured persons about the use of surveillance. They were generally very distressed about this "invasion of privacy" and the implications about their honesty and integrity.

The Review Committee asked SGI for additional information on the process for approving the use of surveillance and on the number of times this tool is used by the Personal Injury Protection Plan. The corporation has recently changed its authorization procedures so that surveillance must be approved by the Assistant Vice President of Injury Claims.

The Review Committee considers that given the associated profound negative implications and the potentially longer term impact on the individual involved, the use of surveillance should be limited. However, the Committee also recognizes that SGI needs to protect itself against fraud and will at times require the use of surveillance to do this, consistent with industry standards.

Implications

Legislation and Regulations

No change to legislation or regulations is required to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

"The Review Committee considers that given the associated profound negative implications and the potentially longer term impact on the individual involved, the use of surveillance should be limited."

Advice

Recommendation

That SGI reinforce the Personal Injury Representative's advisor role and encourage proactive advice to the injured person throughout the claim and rehabilitation process.

Current Situation

Each individual that interacts with the Personal Injury Protection Plan needs some degree of information, assistance, and advice. Some people need more support than others. In particular, some need a fair degree of guidance as they proceed through the claim and rehabilitation process. Currently, the injured person has access to advice from SGI (primarily through the Personal Injury Representative), his or her health care provider(s), and – if he or see chooses to engage such counsel for this purpose – legal advisor(s).

Commentary

The Committee heard from injured persons who had great difficulty with the PIPP process and who may well have benefited from more of a "helping hand" approach in understanding the benefits, the process, and in communicating their concerns.

Within the current structure, the Personal Injury Representative must act as an advisor to the injured person and ensure that the individual understands what is required for the process to work effectively for him or her. For some situations, this will require the Personal Injury Representative to be a *proactive* advisor, offering information and suggestions to the individual throughout the process. This is not inconsistent with SGI's expectations of PIRs, but should be reinforced in training and performance management.

Implications

Legislation and Regulations

No change to legislation or regulations is required to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

Making it Easy

A second fundamental service theme for the Plan must be a focus on good service that is "user-friendly" and makes things easy for the individual. In a situation where a person has been injured, this takes on special dimensions, much like it does, or should, within the health care system. Within this broader theme of "making it easy", the Committee considered five key service features:

1) Accessibility – ensuring ease of access to information and services;

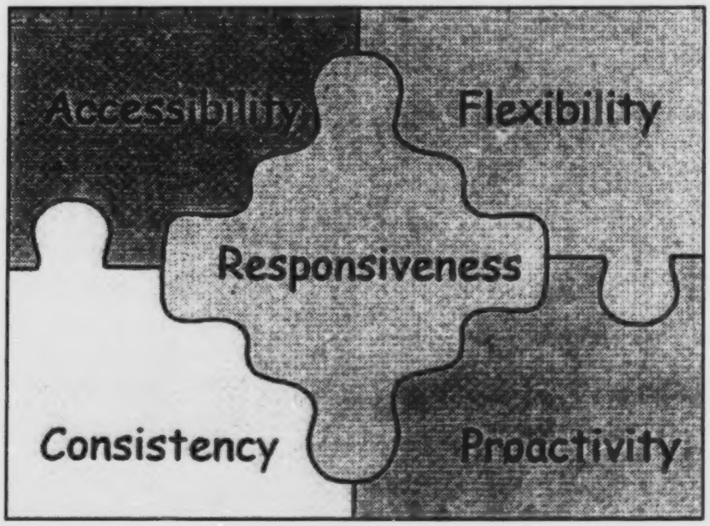
2) Flexibility – accommodating situations out of the normal framework;

3) Consistency – effective policy dissemination and file review to ensure general consistency in benefits;

4) Responsiveness – routinely asking injured persons for feedback on the service they have received and using this information to manage performance issues; and,

5) Proactivity – ensuring the right information is provided in the right form for the individual on a timely basis, including access to the program guide and to files.

Characteristics of services that make it easy



These service features build on the five service features described previously under the "focus on the individual" theme.

Accessibility

Recommendations

That SGI explore ways of enhancing geographic accessibility to the Personal Injury Protection Plan services, particularly for secondary and tertiary assessment and treatment. Discussions to explore coordinated services should extend to other agencies serving the north, including northern health districts, the Workers' Compensation Board, and the federal government's Medical Services Branch.

That SGI initiate and maintain an ongoing information and awareness program to increase the general knowledge and awareness of the Personal Injury Protection Plan and associated benefits. The corporation should consider the use of a Personal Injury Representative or an on-site "northern liaison" person to assist with this process.

Current Situation

The Personal Injury Protection Plan is accessible by a variety of means when initiating a claim: drive-in or walk-in to an SGI claims centre, phone-in to the Bodily Injury Department, write-in from another location, or initiation of a claim by the major loss unit of SGI once a serious accident has been reported in the media.

A claim for benefits can be presented within two years after the day of the accident, providing for situations where there is a delay in recognizing that an injury has occurred. This time limit may be waived by SGI in exceptional circumstances. If a claimant is a minor on the date of the accident, application for benefit is to be made within two years from the date that the claimant reaches 18 years of age.

Accessibility to primary care is available through physicians, chiropractors, and physiotherapists throughout the province. Access to secondary assessments and treatment is available through secondary centres located in many centres across the province. Access to tertiary assessments and treatment is currently available only through the two tertiary centres in Regina and Saskatoon.

Commentary

Communication with the insurer

The Committee found that SGI is reasonably accessible by a number of communications methods, including in-person and phone contact.

Geographic access to services

The Committee found that the accessibility of the Personal Injury Protection Plan information and services is generally good for the majority of the Saskatchewan population. However, the Committee noted that people in the north and in remote rural areas were less likely to receive information and services on a timely basis. To some degree, this is a long-standing problem that affects service delivery for a wide range of programs in the province.

The Committee made a special effort to gather additional information from people in northern Saskatchewan about accessibility and other issues with the Personal Injury Protection Plan. To do this, the Committee held discussions with local officials and interviewed PIRs who serviced the area. Many of the issues were similar to those we heard from people in other parts of the province. However, some problems appear to be unique to northern residents – particularly in the understanding and use of the Personal Injury Protection Plan:

- *Transfer of information:* Information dissemination in the north should take into consideration the cultures, language, distance and access to regular information streams. The Committee was informed that much of the transfer of information in the north is verbal, particularly among the older generations. Information spots on northern FM radio in the Cree and Dene languages may be a useful approach.
- *Point of contact:* One of the PIRs has attempted to increase awareness by meeting with band councils, the RCMP, community leaders, and individuals. The Committee sees this as an excellent approach to establishing the Personal Injury Representative as the local contact person. However, the time and effort involved in this approach is significant, and likely cannot be carried out to the desired level given regular workload situations unless SGI applies a different standard for PIRs in the north.
- *Educational awareness:* Information on the Personal Injury Protection Plan could be incorporated into the driver training program to build awareness and understanding among new drivers. Informative material on the Plan should also be readily available from the organizations that handle vehicle registration for SGI in northern communities.
- *Travel to obtain rehabilitation services:* The availability of primary and secondary services is very limited in the north and in some rural areas. Clients requiring secondary treatment can travel as far as 400 kilometers to get access to treatment, and this is sometimes done using taxis or rented vehicles, all at SGI's expense. This is an issue for other service providers as well, including Social Services, the health district and the federal government. Dialogue among these entities and SGI might result in an alternative, more coordinated approach that would benefit injured persons, patients, and the service providers. In some instances, it may be feasible to have service providers, individually or as a team, travel to the north or rural areas to conduct assessments or provide treatment – for example, several times a month.

Access to secondary and tertiary assessment and treatment

A number of injured persons and health care providers have suggested that the access to tertiary assessments and treatment should be expanded so that there is more choice, more control for the injured person, and more convenience (i.e., not limited to Regina and Saskatoon locations). The Committee was told that a number of the secondary centres were capable of doing this work through their own or expanded multi-disciplinary teams.

Given the potential difficulty of significant travel requirements for some people, the Committee agreed that SGI should look at the feasibility of expanding access to tertiary assessment and treatment beyond the two current centres in Saskatoon and Regina. This would also create additional choice, which would be well-received by both injured persons and health care providers.

As indicated to the Committee by the Saskatchewan Physiotherapy Association,

> *"If congestion continues to be a problem at the tertiary level, then SGI may need to consider opening the system wider, as WCB has done. There is no evidence that treatment in hospital-based facilities is any cheaper or more effective or conversely is more expensive or less effective than treatment in other private facilities."*

The Committee considered the following information respecting the WCB's network of secondary and tertiary assessment and treatment centres and treatment timelines:

- A claimant is assessed within two weeks of being notified, the only exception being when a specialist is required;
- Once the assessment team sees the client, the report is due in two weeks (three weeks if a specialist is required);
- The case manager reviews the report and consults with the family doctor;
- If agreed, the recommendations of the report are implemented as soon as possible, usually within two weeks. If this is not possible, the claimant is shifted to another clinic;
- The WCB has 10 tertiary centres located in Prince Albert, Saskatoon, and Regina; two in Alberta; and one in Manitoba ;
- In order to gain tertiary status, a clinic must have operated as a secondary centre for six months and processed 36 secondary patients, have a doctorate level psychologist in house, and full functional capacity evaluation (FCE) capacity;
- The WCB has 24 secondary centres in 11 Saskatchewan locations; two in Alberta; and one in Manitoba; and,
- The WCB has an evaluation system for the treatment facilities that focuses on return to work, but is working to develop a system that is more outcomes based.

The Committee noted that SGI may want to consider the WCB's approach and experience as it moves to expand the Personal Injury Protection Plan network of secondary and tertiary assessment and treatment centres over time.

Implications

Legislation and Regulations

No change to legislation or regulations is required to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

Flexibility

Recommendation

That SGI continue to be flexible in applying the provisions of the legislation and the regulations, and that it ensure its PIRs are encouraged to seek alternative approaches to unusual situations so that injured persons can be effectively served consistent with the intent of the Personal Injury Protection Plan.

Flexibility of a service provider is a fundamental feature of good service, and involves the tailoring of service to fit a situation which does not fit the norm.

Current Situation

Although SGI is bound by the provisions of legislation and regulations, the corporation has a degree of flexibility in applying the provisions to the circumstances of individual injured persons.

Commentary

In its discussions with SGI, the Committee learned that SGI does exercise flexibility where it feels it is warranted. This flexibility sometimes means that the corporation makes payments "ex gratia" or over and above what an individual is technically entitled to under the provisions of the legislation and regulations.

The Committee heard confirmation of this flexibility from some injured persons who felt that SGI had gone beyond the Plan's normal boundaries in providing some particular benefits. However, the Committee heard, too, from injured persons who considered that SGI was too rigid on some points where flexibility would make more sense. An example raised with the Committee was the requirement for a set number of competitive quotes. For someone living in an area such as the north where alternative services are limited, this is not feasible.

The Committee also heard from injured persons who felt that SGI should be more flexible in what health care services are covered as benefits. For example, an individual who spoke with the Committee at a public consultation meeting provided the following observation:

> *"I have little hope that SGI will ever understand what holistic healing means, that patient involvement in care is absolutely necessary to healing, that requiring dependence on an inadequate system of care has nothing to do with healing."*

Another person commented on the issue of choosing a replacement worker or an income replacement benefit:

> *"My husband is a self-employed contractor … Work had to be completed, so we hired a former employee to come back and try to finish up the work … Looking back, we would have been better off to stop the business and receive no income at all, but … once we started with the employee, we couldn't go to wage replacement. You also don't want to close your business down … It has taken us years to recover from our financial losses … please don't do this to anyone else.*
>
> *Be flexible and consider every aspect of every situation."*

The Committee makes a recommendation, described earlier in this report, to add flexibility to this particular benefit provision.

The Committee concluded that SGI currently has significantly flexibility and that the corporation both recognizes the need to be flexible, and exercises some flexibility where it feels it is warranted. However, the Committee perceived that the corporation is not exercising this flexibility to the degree that it might be in working to help injured persons.

The Committee recognized that SGI must deal with the inherent tension between flexibility and consistency as it applies the provisions of legislation and regulations. Clearly, the corporation's flexibility is not open-ended and should be used only to deal with compelling exceptions to the norm. However, if an exception eventually becomes the norm, then SGI should be pursuing legislative and regulatory change to formalize what is more appropriately a broadly-based provision of the Personal Injury Protection Plan.

Implications

Legislation and Regulations

No change to legislation or regulations is required to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

"I have little hope that SGI will ever understand what holistic healing means, that patient involvement in care is absolutely necessary to healing, that requiring dependence on an inadequate system of care has nothing to do with healing."

Consistency

Recommendation

That SGI undertake to measure consistency of decision-making in the context of an ongoing quality assurance initiative that incorporates a focus on supervisory support and training.

Current Situation

The consistency of decision-making related to PIPP claims is largely dependent on the Personal Injury Representative and his or her adherence to the legislation, regulations, policies and procedures when making decisions. However, consistency is also dependent on the clarity of legislation, regulations, policies and procedures.

Commentary

The Committee heard from both PIRs and injured workers that SGI is not always consistent in its decision-making. To a large degree, this is attributable to the discretion and authority of PIRs in dealing with individual situations, and demonstrates both the uniqueness of each injury situation and the flexibility that PIRs have in fulfilling their responsibilities.

However, we also were informed of situations where PIRs made decisions to provide benefits that SGI policy indicates are specifically not to be provided for. It was suggested to the Committee that this type of inconsistency can be addressed through effective policy dissemination and the file review process.

A third issue raised by PIRs in this area was the lack of clarity of some parts of the legislation (e.g., related to students and youth). SGI recommended changes in these areas to bring clarity to the subject area.

Injured persons need to be confident that in dealing with SGI they will be able to rely on PIRs to be generally consistent when determining benefits. The Saskatchewan Physiotherapy Association commented on this issue as follows:

- *"There is frequently considerable inconsistency in how this plan is administered from client to client, which can result in inequitable treatment between clients dependent on the adjuster. This can be frustrating for both clients and care providers.*
- *From the perspective of the caregiver, it is difficult to know what is expected of you as each injury representative has a different expectation of what is appropriate for similar circumstances.*
- *There are inconsistencies between adjusters, as some clients get approval for services immediately, while others wait weeks while adjusters get approval from upper levels."*

The Committee recognized the importance of flexibility, as noted earlier, but considered that this must be within a broadly consistent application of the provisions of the legislation and regulations. The Committee agreed that the key to consistency was the practice of Personal Injury Representatives, supported by effective training and support.

Implications

Legislation

No change to legislation is required to implement this recommendation.

Regulations

No change to regulations is required to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

> **"There is frequently considerable inconsistency in how this plan is administered from client to client, which can result in inequitable treatment between clients dependent on the adjuster. This can be frustrating for both clients and care providers."**
>
> **– Saskatchewan Physiotherapy Association**

Responsiveness

Recommendation

That SGI continue to make responsiveness to injured persons a priority and to ensure consistent measurement of responsiveness as part of its ongoing evaluation of service effectiveness.

Good service means a service provider is responsive to the needs, requests, and questions of a customer. Responsiveness involves timeliness, clarity of information, and a receptive attitude. In the PIPP context, SGI should be responsive to injured workers through the course of their involvement with the Plan.

Current Situation

SGI's internal manual indicates a number of standards that are to be met in responding to an injured person's needs:

- All accounts received for services rendered must be paid within seven days of receipt;
- Payment of income replacement benefits, impairment benefits and other indemnities should be made promptly upon receipt of appropriate documentation;
- When an obvious disability exists and an income replacement benefit is payable, it shall be paid every 14 days; and,
- All incoming correspondence must be replied to within five working days.

Commentary

The Committee found that SGI has set expectations for responsiveness and measures the injured person's assessment of that responsiveness on a routine basis. The Committee also found that PIRs are generally committed to being responsive in the course of their work.

The Committee concluded that on balance, SGI set a reasonable framework for responsiveness and this is being applied fairly well across the corporation, particularly by the PIRs. However, there remains room for improvement, generally, and for effective follow-up when the standard is not met effectively.

Implications

Legislation and Regulations

No change to legislation or regulations is required to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

Proactivity

Recommendation

That SGI take whatever measures necessary, including possible changes to workload management for PIRs, to ensure that it has the capacity to be consistently proactive in dealing with injured persons in helping them through the process of rehabilitation on a timely basis.

Ensuring the right information is provided in the right form for the individual on a timely basis requires SGI to be proactive. While it is clearly the injured person's responsibility to contact the insurer and to maintain contact with his or her Personal Injury Representative, it is also incumbent on the corporation to be proactive in order to ensure a strong service orientation.

Current Situation

SGI has established expectations that its personnel, notably the Personal Injury Representatives, are to be proactive in contacting injured persons about their claim and about the progress of their recovery. However, the extent of proactivity varies from one Personal Injury Representative to another and from one claim file to another, the result of a number of factors. One of these factors is workload.

Section 168(2) of the Act provides for the prompt release of information from SGI to a claimant when requested to do so. The internal Personal Injury Protection manual provides a detailed explanation of how this is to be applied. Two types of information are noted:

To be released without charge to the injured person:

- Claimant's statement and diagram;
- Medical reports from the injured person's attending practitioner;
- Independent medical reports;
- Employment information; and,
- Any forms completed by the injured person.

To be released only through The Freedom of Information Act procedures:

- File documentation;
- Personal Injury Representative's notes;
- Investigation reports; and,
- All other information.

Commentary

The Committee found that PIRs generally acknowledge the importance of proactivity and practice it to some degree. However, some of the PIRs we spoke with indicated that the price of being very proactive was time – that contact with the injured person inevitably involved time that would not be available for other tasks.

It is our understanding that at least in some instances, PIRs feel that their workloads make it impossible for them to be as proactive as they should be. As a result, information may not be exchanged on a timely basis, and injured persons may in fact experience delays in moving from one level to another within the optimum timeframe for progressing from primary to secondary to tertiary assessment/treatment options.

The Committee noted the linkage between this issue and the general issue of Personal Injury Representative workload level and distribution, which was addressed earlier in this report. The Committee considered that to free up more time for the PIRs to take proactive measures, SGI should explore avenues to shift responsibilities (e.g., some administrative tasks) from PIRs to other SGI staff.

In the area of information being released to injured persons on request, the Committee heard of many instances where this has happened consistent with SGI's interpretation of the Act. However, we also heard of situations where individuals felt they were not in receipt of complete information.

The Committee concluded that SGI set an appropriate standard of proactivity, but that in some instances it could be practiced more fully.

Legislation and Regulations

No change to legislation or regulations is required to implement this recommendation.

Cost

The cost of implementing this recommendation should be minimal.

"The Committee found that PIRs generally acknowledge the importance of proactivity and practice it to some degree. However, some of the PIRs we spoke with indicated that the price of being very proactive was time."

Conclusion - Service

The Review Committee concluded that SGI has generally done well in serving injured people under the Personal Injury Protection Plan, and believes that service has improved over the first five years of the Plan's operation.

The Committee also concluded that improvements are necessary in order to both maintain and enhance the quality of service for injured persons. Ensuring a focus on the individual and making it easy for the injured person to deal with the Plan will continue to be central to effective service delivery.

Chapter Six – **Related Issues**

The Personal Injury Protection Plan Review Committee considered a number of issues in the course of the review that do not fit within the framework of founding features, benefits, process, or service. In this chapter, we identify and comment on the most significant of these matters:

- The legislated five-year review of Part VIII of **The Automobile Accident Insurance Act**;
- Public communication of the portion of insurance premiums directed to personal injury coverage;
- Increasing public awareness and understanding of the Personal Injury Protection Plan through programs such as driver education;
- Reporting of drivers who should not be driving due to a health issue; and,
- Saskatchewan Health and SGI sharing of health care costs.

The legislated five-year review

The Automobile Accident Insurance Act provides that a review committee be appointed every five years to review and report on all matters concerning Part VIII of the Act, including related regulations and the administration of the legislative provisions and the regulations.

This review is the first of these five-year reviews. The Review Committee accordingly provides the following observations for future consideration:

- All people with an interest in the outcome of such a review should contribute to the process, informing the review committee of issues, alternatives, and recommendations from their particular point of view.
- Making a concerted effort to solicit information and opinion from interested parties can produce valuable input for consideration.
- SGI can benefit significantly from the reviews, particularly if the corporation is as collaborative and co-operative with future review committees as it has been with this first one.
- A five-year timeframe is a reasonable period of time between reviews.
- SGI should report to the next review committee on its follow-up to the results of this review, including progress on any recommendations that may be accepted.
- Public consultation using advertising and public meetings is an important mechanism for getting input to the review process. However, direct contact (e.g., by letter) is more effective in reaching individuals, particularly injured persons. Future review committees would benefit from using a similar letter approach, and may also find value in incorporating a survey element to this contact.
- The timeframe for future reviews should be a six-month period placed between September and June. Public consultation is extremely difficult over the summer period, as is the commitment of time by committee members. The timeframe should be targeted at six months so that the committee members can benefit from a relatively short time between the orientation period and the preparation of a report.
- While the legislation calls for a committee of five, a slightly larger number should be appointed to allow for possible resignations for unforeseen personal reasons.

The Review Committee hopes that these observations will be helpful to planning for future review processes.

The cost of personal injury insurance coverage

SGI currently includes the cost of automobile damage insurance and the cost of personal injury insurance coverage as a combined premium amount. This has not contributed to public understanding of the Personal Injury Protection Plan, and should be addressed. The Committee understands that SGI is already planning to make this change to indicate the coverages as separate items.

The Committee noted that in Quebec, the premium for vehicle damage insurance is paid by owners in conjunction with obtaining a vehicle licence, whereas the premium for personal injury insurance is paid in conjunction with the driver's licence.

Public awareness and understanding

As noted elsewhere in this report, the Committee found public awareness and understanding of the Personal Injury Protection Plan to be generally very poor. Of greater concern is that the lack of awareness and understanding appears to be in large part related to a passive approach to purchasing compulsory insurance – members of the public do not set out to inform themselves about their coverage, options, and the implications if in fact they become injured in an accident.

The Committee recognizes that increasing public awareness and understanding can be achieved through a range of alternatives, some of them very costly and therefore inherently controversial. However, the Committee suggests that driver education programs would be a good starting point for helping new drivers be aware of the Plan and its implications.

Reporting of drivers who should not be driving due to a health issue

All drivers are required by law to report to SGI any significant change in their health that may affect their ability to operate a vehicle safely. The Committee was informed of the concern that this is not always the practice and that as a result, the public is put at risk.

Physicians and vision specialists (optometrists and ophthalmologists) are legislatively required to report to the SGI Medical Review Board situations where they feel individuals have a medical condition that may impair their ability to drive. However, it is the understanding of the Committee that the reporting of these individuals by physician and vision specialists has been ineffective at times.

The problem appears to stem from disjointed communication involving the reporting physician/vision specialist, the SGI Medical Review Board, and local SGI licence issuers. For example, a person may be told by the health practitioner that he or she should not be driving, but when following up with a licence issuer may be told that there is no such restriction recorded on the system. The disjointed communication results in potentially unsafe drivers continuing to drive, frustration on the part of health care providers, and concern on the part of law enforcement personnel.

The Committee suggests that a more streamlined and immediate means of communication occur from the reporting physician/vision specialist to the SGI Medical Review Board and then to the provincial licence registry.

Saskatchewan Health and SGI sharing of health care costs

The Committee noted that health care costs for persons injured in automobile accidents are not all precisely allocated to SGI. Nor are the health care costs covered by SGI all related to persons injured in automobile accidents. For example, the Acquired Brain Injury programs funded by SGI support persons injured by other means.

The Committee recognized the concern (expressed by some health care providers and others) that the premium-paying public is financing some general health care costs through the current arrangement. However, the Committee also noted that Saskatchewan Health can be said to be financing health care costs that are the responsibility of SGI as the insurer.

The Committee did not seek to address this issue, but wanted to ensure that it was identified for potential future consideration.

Chapter Seven – Recommendations

This chapter provides a listing of all of the Committee's recommendations.

Chapter 2

That Saskatchewan continue with its Personal Injury Protection Plan with improved benefits and service, and with an enhanced role for tort law.

That a tort action for economic loss in excess of benefits be retained.

That the tort action for economic loss be extended to cover all economic loss in excess of the benefits.

That pre-judgement interest be awarded on tort damages for economic loss in the amount recoverable at common law.

That the requirement of proof for future losses be on the basis of "simple probability" as at common law, rather than on "a balance of probabilities".

That the tort action under Section 103 be available in Small Claims Court as well as in the Court of Queen's Bench.

That a tort action for all losses be available against institutional third parties whose negligence was proximately related to the accident.

That a tort action for all losses be available against health professionals and institutions when, as a result of their negligence the injured person's injuries are made worse.

That full Personal Injury Protection Plan benefits be available to any person injured when a vehicle has been used as "a weapon of choice" to harm that person.

That a tort action, including the possibility of "aggravated" and "exemplary" damages, be available for all losses incurred by an injured person where a vehicle has been used deliberately and specifically to harm that person.

That SGI have the discretion to recover benefits paid from any person criminally responsible for deliberately causing injuries.

That a person who is injured in the course of intentionally causing personal injury to another, and who is convicted of a criminal offence in relation to that conduct, be denied both an income replacement benefit and a permanent injury benefit but remain entitled to benefits for rehabilitation and expenses.

That a person who is injured in the course of intentionally causing personal injury to another have no right of action in tort against anyone if the circumstance should occur that an action might otherwise be available.

That Personal Injury Protection Plan benefits excluding the Permanent Impairment Benefit be provided to a person injured in a motor vehicle accident who is subsequently charged and convicted of a first offence for impaired driving.

That rehabilitation benefits but not income replacement or permanent injury benefits be provided to a person injured in a motor vehicle accident who is subsequently convicted of impaired driving in relation to that accident and who has been convicted of impaired driving or a .08 offence within a five year period previous to the current conviction.

That a tort action be available against the at-fault driver to other persons injured as a result of a motor vehicle accident where the driver is subsequently convicted of impaired driving in relation to that accident and who has been convicted of impaired driving within a five year period previous to the current conviction.

Chapter 3

That the medical and rehabilitation limit be increased from $541,824 to $5,000,000, with caps on the amount available for weekly personal and home care.

That the care grids for personal and home care assistance be revised and benefits include activities normal to operating that injured person's home.

That the definition of catastrophic injury be made clear and that it be broadened to include not only quadriplegia, paraplegia and severe brain injury, but also additional impairments such as total blindness and complete loss of two limbs.

That reasonable home renovations be funded to meet the specific and changing needs of catastrophically injured persons.

That the accompanying care benefit be expanded to pay expenses and income replacement when another person is helpful to the rehabilitation process if it is recommended by a medical practitioner.

That for assessing permanent functional impairment, SGI adopt the Manitoba schedule, which includes soft tissue injuries and impairment of neck and back function.

That the Table of Successive Remainders be changed to allow for calculation of the permanent impairment benefit using the method from the American Medical Association guidelines.

That the amount of the Permanent Impairment Benefit for catastrophic injuries be increased to $175,000.

That SGI evaluate the feasibility and affordability of Quebec's Intangible Loss Benefit.

That the income replacement benefit be based presumptively on employment at the time of the accident, but that where the injured person can show that he or she would likely have earned a larger sum in the year prior to the accident, that the income replacement benefit be based on that sum.

That in all cases unless otherwise specified, there be an option available upon request of the claimant for a reassessment of the income replacement benefit after 180 days following the accident , and that from that time onward the income replacement benefit be based on the greater amount of minimum wage or the average annual income in the two years prior to the accident.

That in the case of a person who was a caregiver of one or more persons at the time of the accident, the income be based on an assessment of the probability that the injured person would have earned income in the future and when that income would have been earned; and that the assessment be based on the education, training, work experience and physical and intellectual abilities of the injured person prior to the accident.

That the Maximum Yearly Insurable Earnings (MYIE) remain at $56,855 (and continue to be indexed to the Industrial Average Wage).

That the Income Replacement Benefit continue to be calculated on the basis of 90% of the injured person's net income.

That in cases of catastrophic injury, with the exception of students and youth, the income replacement benefit be paid from the date of the accident and represent the greater of actual income or the industrial average wage.

That students or youth with catastrophic injury receive the benefit after current studies or at age 16.

That anyone earning greater than industrial average wage at the time of the crash receive an income replacement benefit based on actual income.

That in calculating the Personal Injury Protection Plan income replacement benefit for an injured person over the age of 65, a benefit be paid only if the individual held employment at the time of the crash.

That for an injured person over the age of 65 who held employment at the time of the crash, the income replacement benefit be stepped down over the next four years to age 69.

That if an injured person over the age of 65 has received an income replacement benefit for the previous two years or more, a pension benefit be paid based on the duration of time he or she received an income replacement benefit. That in defining the pension benefit, SGI investigate models such as the one used by the Workers' Compensation Board.

That in calculating the Personal Injury Protection Plan income replacement benefit, deductions continue to be made for employment insurance and Canada Pension Plan premiums.

That in calculating the Personal Injury Protection Plan income replacement benefit for self-employed persons, the benefit be the greatest of:

(a) actual net income (using prior three years' calculations), adding back certain fixed expenses for the first 12 months only and paying any lease cancellation costs;

(b) average Saskatchewan income for that occupation and level of experience (Appendix A of the Regulations), to the limit of actual gross income; if experience is less than three years, full Appendix A be used to allow for business start-up implications; or

(c) replacement labour.

That the injured person be allowed to switch from (a) or (b) to (c) or from (c) to (a) or (b) at any one point when receiving these benefits.

That in calculating the replacement worker benefit where the use of specialized equipment owned by the injured person is involved, the injured person may choose to hire, at a cost consistent with market value, a contractor that uses other equipment to perform the work.

That in calculating the Personal Injury Protection Plan income replacement benefit for farmers who are injured, the cost of contract workers such as custom combine operators be allowed as an alternative for the replacement worker benefit and at a cost consistent with market value for that work.

That in calculating the Personal Injury Protection Plan income replacement benefit for injured farmers, adjustments be allowed to pay up to the maximum annual benefit in variable amounts (i.e., possibly greater than $550 per week) and times (i.e., according to crop year requirements) so that a farmer may hire replacement workers to deal with seasonal work demands over the year.

That the Family Enterprise Benefit be moved to the income replacement benefit and be paid until the injured person is recovered or is entitled to an income replacement benefit.

That the income replacement benefit for students and youth be based on minimum wage for those who are unable to work at the end of elementary or secondary level studies or age 16, except for those catastrophically injured. That for catastrophically injured students or youth, and for those studying at the post-secondary level, the benefit be the industrial average wage at the end of studies or age 16. That a tort action be allowed for actual and potential income loss.

That the caregiver benefit be moved into the income replacement benefit division of the Act.

That for the for the first 180 days, the schedule of payments for caregiving be retained, and that an injured person who remains fully incapacitated from caregiving during that period be entitled to the amount in the schedule without proving actual expenses.

That for the first 180 days, where the caregiver has a reduced caregiving role either because the number of persons cared for is reduced, or because children are older, or for any other reason, the caregiving benefit be reduced accordingly.

That after 180 days, caregiver benefits be paid according to the greater of (a) actual and reasonable expenses, within limits or (b) the minimum wage.

That the legislation make clear that injured persons who at the time of the accident worked outside the home and were also responsible for caregiving tasks should have access to both caregiver benefits and income replacement benefits. That the benefits for caregiving be calculated based respectively on the number of persons cared for and the tasks the injured person performed before the accident.

That in calculating the death benefit for low- and non-earners with dependants, a death benefit be paid for each dependant based on minimum wage and the age of the dependant and comparable to the federal government's child support guidelines.

That a benefit be included for financial counselling, to a limit of $500, for anyone receiving a significant lump sum benefit, or anyone receiving a long-term income.

That SGI continue to be sensitive to changes in health care with respect to alternative/complementary therapies and treatments for injured persons.

That SGI top up any benefits available under first payer compensation plans that are not as generous as the Personal Injury Protection Plan.

That the definition of student and youth be changed so that "youth" includes those children under age 16 who do not attend school; and, "student" and "youth" include a minimum school attendance of 60% and a full-time course load (as defined by the educational institution and recognizing the individual's course load capacity).

That SGI continue to improve the initial process of applying for benefits, ensuring the provision of information and advice to the injured person quickly and clearly.

That SGI be more systematic in following the established steps of the adjudication process, but without imposing delays that would be inconsistent with the rehabilitation focus of the Plan.

That SGI enhance its case management practices, building on the findings from the Mercer review. That the roles and responsibilities of the case management team be clarified and communicated based on the following elements:

(1) the Personal Injury Representative as the primary case management coordinator for the injured person, including being proactive in coordinating and cooperating with the primary caregivers;

(2) the primary caregiver as the health care case manager, coordinating and cooperating with other health care providers and communicating with the injured person and SGI; and

(3) the vocational rehabilitation consultant as the return to work or activities of daily living case manager, coordinating with the injured person, SGI, the employer, and others as required to assist the injured person.

That the injured person's choice of a primary caregiver be formally acknowledged. That the individual practitioner be informed of the designation so that he or she may understand and fulfill the primary caregiver role in assisting the injured person, including the provision of timely and adequate reports.

That SGI clarify for injured persons and health care providers the Personal Injury Representative's case management roles and responsibilities, particularly the distinction between these responsibilities and the direction of health care service that is the responsibility of the primary caregiver.

That all participants in the process of helping an injured person with his or her rehabilitation actively share information with the primary caregiver and that the primary caregiver be proactive in working with other health care providers in the rehabilitative process.

That SGI continue to use the Early Intervention Program approach to helping injured persons with their rehabilitation. That the purpose and process and value of the Program be more effectively communicated to injured persons, to the primary caregiver, and to other health care providers.

That SGI shift the timing of secondary and tertiary assessment and treatment to be more systematic, with referrals triggered by defined timelines. That SGI explore the feasibility of convening a consensus conference of treatment stakeholders once an injury has been confirmed so that the injured person may have a multi-disciplinary review at the outset of the rehabilitation process.

That SGI incorporate a change management perspective into the return to work process so that injured persons have access to appropriate counselling and assistance to deal with the changes they are facing. That Personal Injury Representatives be trained in change management so that they might better identify injured persons who need this type of assistance.

That regardless of the risk factors of an individual, the Personal Injury Representatives not make assumptions about a person's ability to cope based on those indicators. That SGI consider a specialized Personal Injury Representative group to handle longer-term claim files that involve significant risk factors. That communications with injured persons on their risk factors be clear and timely, with open dialogue on how the risks might best be managed.

That SGI work with health care providers to develop more effective means of incorporating a multi-dimensional view of wellness early in the rehabilitation process.

That SGI continue its support for the Acquired Brain Injury program. That SGI seek other third party funders for the program with the possible objective of reducing SGI's support as other funding sources are secured. That SGI work with the health care community to address the issue of delayed diagnosis and referral to the program for services.

That SGI continue to use contractor services, but within a well-defined and managed performance framework. That SGI work towards an early definition of standards for vocational rehabilitation consulting services.

That in its interactions with health care providers, SGI address the issue of diagnosis as a priority, including asking the primary caregiver for diagnosis information on a timely basis and ensuring follow-up where necessary.

That SGI be proactive in working with health care providers to ensure that they understand, accept, and fulfill their roles and responsibilities related to the recovery and rehabilitation of injured persons under their care. That when there is evidence of sub-optimal performance by a health care provider, SGI take the initiative to refer the issue to the appropriate professional self-governing body.

That SGI emphasize in its communications with injured persons the responsibilities that they as claimants must fulfill on a timely basis related to their injury claims. That the communications emphasize the importance of fulfilling these responsibilities as positive and constructive in helping individuals to control and contribute directly to their successful recovery and rehabilitation.

That SGI continue to enhance its use of health care consultants, particularly in communicating with health care providers responsible for the care of injured persons. That SGI consider the feasibility of adopting or adapting the in-house health care staff model used by WCB organizations to support effective health care management for injured persons.

That SGI take a broader view of grief to ensure that supportive counselling services are provided to injured persons who need them.

That SGI take a leadership role in establishing more optimal chronic pain management services across the province, similar to what it did in establishing the Acquired Brain Injury Program. That in this initiative, SGI work in collaboration and on a cost shared basis with Saskatchewan Health, the Workers' Compensation Board and other agencies.

That an independent personal injury advisory office be established, reporting to Minister of the Crown other than the SGI Minister, to assist injured persons when they are in disagreement with SGI, including assistance in all appeals processes.

That alternative dispute resolution processes be retained and expanded to replace the legislated internal review process; and that the injured person have a choice concerning such dispute resolution processes prior to appeal to an independent tribunal.

That an independent personal injury tribunal be established to deal with personal injury appeals, and that the tribunal include a legal and physical office separate from SGI, and report to a different Minister of the Crown.

That appeals from the personal injury tribunal to the Saskatchewan Court of Appeal be allowed, but only on a question of law or jurisdiction.

That the timelines for the appeals process be based on (a) the claimant making the appeal within one year of the decision in question and (b) each stage of the appeal – i.e., the alternative dispute resolution and the independent tribunal – allowing a maximum of 90 days from receipt of the appeal to a decision being required.

That SGI continue to enhance its human resource management approach in the Personal Injury Protection Plan, including:

(1) Recruitment with a focus on attitudinal strengths and competencies in line with the characteristics of a good Personal Injury Representative;

(2) Training with an enhanced focus on service considerations, including demonstrating understanding, sensitivity, and compassion for injured persons;

(3) Addressing workload assignment and distribution issues for Personal Injury Representatives, specifically in rural and northern areas where significant travel is involved and the Personal Injury Representative plays a key communications role for the Personal Injury Protection Plan; and,

(4) Providing effective supervisory support to the Personal Injury Representatives.

That SGI continue to use the current organizational framework centred on the Personal Injury Representative position and modify it as appropriate to better serve the needs of injured persons.

The Committee recommends that SGI undertake to review its communications approaches and messages and endeavour to increase and improve:

(a) the public's understanding and expectations of the Personal Injury Protection Plan;

(b) the flow of information to injured persons and management of their expectations throughout the course of their claim experience; and,

(c) the education of health care providers, including the reinforcement of the research and evidence on which the Early Intervention Program is based.

That as part of its ongoing operations, SGI routinely assess the effectiveness of the linkages required at the various points of the claim and rehabilitation process and as an educational and advisory process, communicate with health professionals on what are clearly "best practices". This is particularly important for the secondary and tertiary programs and their linkage with the primary caregiver.

That SGI expand its quality assurance mechanisms, including comparisons to industry standards and best practices. That SGI work with service providers to develop appropriate service standards and monitor performance based on those standards.

Chapter 5

That SGI reinforce in its Personal Injury Representative training that the Personal Injury Representative is responsible for helping the individual claimant to understand that the corporation recognizes and respects that each injured person's situation is unique, but that:

(a) aspects of each injury have some similarities;

(b) based on those similarities, SGI and the health care system uses some standardized (and proven) approaches; and,

(c) to the degree it is appropriate, these approaches will be applied to the individual's circumstances.

That SGI reinforce, through training and support, the need for PIRs to make listening a priority in their dealings with injured persons.

That SGI continue to emphasize, through training and support, the need for PIRs to be consistently sensitive in their dealings with injured persons, and that this include specific attention to cultural sensitivity.

That SGI use surveillance only when alternative methods are insufficient to obtain the information needed by the corporation.

That SGI reinforce the Personal Injury Representative's advisor role and encourage proactive advice to the injured person throughout the claim and rehabilitation process.

That SGI explore ways of enhancing geographic accessibility to the Personal Injury Protection Plan services, particularly for secondary and tertiary assessment and treatment. Discussions to explore coordinated services should extend to other agencies serving the north, including northern health districts, the Workers' Compensation Board, and the federal government's Medical Services Branch.

That SGI initiate and maintain an ongoing information and awareness program to increase the general knowledge and awareness of the Personal Injury Protection Plan and associated benefits. The corporation should consider the use of a Personal Injury Representative or an on-site "northern liaison" person to assist with this process.

That SGI continue to be flexible in applying the provisions of the legislation and the regulations, and that it ensure its PIRs are encouraged to seek alternative approaches to unusual situations so that injured persons can be effectively served consistent with the intent of the Personal Injury Protection Plan.

That SGI undertake to measure consistency of decision-making in the context of an ongoing quality assurance initiative that incorporates a focus on supervisory support and training.

That SGI continue to make responsiveness to injured persons a priority and to ensure consistent measurement of responsiveness as part of its ongoing evaluation of service effectiveness.

That SGI take whatever measures necessary, including possible changes to workload management for PIRs, to ensure that it has the capacity to be consistently proactive in dealing with injured persons in helping them through the process of rehabilitation on a timely basis.

Chapter Eight – **Summary of Implications**

In this chapter, the Review Committee provides a summary of the implications of its recommendations. If they are implemented, they will in some cases require legislative or regulatory change. The financial implications vary as well, with some recommendations having no financial impact because they reflect current practice, some having minimal impact, and others resulting in a notable increase or decrease in costs.

Implications for Legislative and Regulatory Change

The Committee's recommendations have significant implications for both legislation and regulations. Many provisions in **The Automobile Accident Insurance Act** and **The Personal Injury Benefits Regulations** will need to be modified in order to incorporate the recommended changes. In the report, we have identified where we believe legislative and/or regulatory change will be required in order to implement specific recommendations.

Financial Implications

In assessing the financial implications of recommendations, the Review Committee has relied primarily on estimates by its actuary, PricewaterhouseCoopers LLP. Given that a number of our recommendations are consistent with recommendations that SGI made to the Committee, we have also noted in the report where estimates have been provided by the corporation and its actuary.

The Committee recognizes that in some areas the financial implications cannot be precisely estimated at this point. However, we believe that the following estimated financial implications represent the major potential cost impact of implementing the recommendations in this report.

Chapter	**Recommendation**	**Estimated Increase (Decrease) in Costs 2**
2	Allow a tort action for economic loss in excess of benefits.	$941,000
2	Deny income replacement benefit to injured persons who have been convicted of impaired driving. Allow a tort action against an at-fault impaired driver.	(574,472) 215,115
3	Increase the rehabilitation benefit limit to $5,000,000.	1,453,000
3	Revise the care grid for personal care and home assistance.	345,000
3	Adopt the Manitoba schedule for permanent functional impairment, including soft tissue injuries and impairment of neck and back function.	(1,788,000)
3	Increase the maximum Permanent Impairment Benefit for catastrophic injuries to $175,000.	716,741
3	Change the income replacement benefit for those with catastrophic injuries to the greater of the Industrial Average Wage or actual income.	1,377,000
3	Pay income replacement to those over age 65 only if the individual held employment at the time of the accident, step down the benefit over the next four years to age 69, and pay a pension benefit based on the duration of time the person received an income replacement benefit.	(3,022,000)

Chapter	Recommendation	Estimated Increase (Decrease) in Costs 2
3	Pay income replacement to self-employed based on the greatest of: (a) actual net income, (b) average Saskatchewan income for that occupation and level of experience, or (c) replacement labour. In calculating net income, add back certain fixed expenses for the first 12 months only and pay any lease cancellation costs. Allow a switch on a one-time basis from (c) to (a) or (b) or from (a) or (b) to (c).	814,000 137,000
3	Provide a contractor option for the replacement worker benefit, at a cost consistent with market value for that work. For farmers, allow flexibility in payment of the benefit to deal with seasonal work demands over the year.	1,080,000
3	Base income replacement for students and youth on minimum wage for those who are unable to work at the end of elementary or secondary level studies or age 16. For catastrophically injured students and youth, and for those studying at the post-secondary level, pay Industrial Average Wage at the end of studies or age 16. Allow a tort action for actual and potential income loss.	(142,000) 355,172
3	Move the caregiver benefit to income replacement.	483,000
3	Pay a death benefit for low- and non-earners for each dependant based on minimum wage and the age of the dependant and comparable to the federal government's child support guidelines.	363,000
3	Top up any benefits available under first payer compensation plans that are not as generous as the Personal Injury Protection Plan.	193,000
3	SGI recommendations generally supported by the Committee	1,600,000
4	Establish an independent personal advisory office, expand alternative dispute resolutions processes, and establish an independent personal injury tribunal to assist injured persons when they are in disagreement with SGI.	1,000,000
	Total estimated cost impact of implementing recommendations	***$5,546,556***

In total, the financial impact of implementing the Review Committee's recommendations is estimated at $5.5 million annually. Translated into the cost impact on a Saskatchewan person purchasing personal injury insurance from SGI, this would mean an average increase of approximately $6.00 on the plate insurance.

Other Implications

The Committee's recommendations have implications beyond the substantive changes to legislation, regulations, and costs of the Personal Injury Protection Plan. For example, the recommendation that SGI take a leadership role in chronic pain management will have implications for Saskatchewan Health. The suggestion that SGI look for other partners to fund the ABI programs would also have an impact on Saskatchewan Health. And the recommended expanded role of tort actions would have an impact on the court system and on the use of Small Claims Court. On the other hand, if tort law has a significant deterrent effect, there may be a reduction in accidents, with a resulting reduction in overall accident costs.

The Committee recognizes that the breadth and depth of these and other implications of the recommendations will need to be carefully assessed by decision-makers as they determine the future of the Personal Injury Protection Plan.

The implications in terms of the values of the society in which we live stretch beyond even these considerations. They suggest that, with very little increased cost Saskatchewan can continue to care for its motor vehicle casualties in a humane and responsible way.

Conclusion

The Review Committee's recommendations have a significant potential impact – on legislative and regulatory provisions and on the cost of the Personal Injury Protection Plan. However, the proposed changes would address a broad range of issues and allow for many important improvements. The Committee considers that the related cost increase is both appropriate and manageable.

Chapter Nine – **Closing Statement**

The Committee's review of the Personal Injury Protection Plan was an extremely worthwhile, informative and challenging task. The Committee endeavoured to take a comprehensive approach, listening carefully to the views of people who have an interest in the Plan, and addressing a wide range of issues and alternatives.

Of the hundreds of suggestions made to the Committee over the course of the review process, many were directed towards changes that people believe would improve the Plan and its benefits. While it was not possible or in some situations appropriate to acknowledge or address very individual suggestion in this report, the Committee has undertaken to review all of the comments made through submissions, letters, e-mail, and phone calls over the past months.

The Committee greatly appreciates the active participation of more than one thousand people in the review process. It was essential that the Committee understand the impact that the Plan has had on Saskatchewan people over the last five years, and through the thoughtful sharing of individuals with directly relevant experience, we learned a great deal.

As a result of the review work, the Committee has reached five fundamental conclusions about the Personal Injury Protection Plan.

The Personal Injury Protection Plan is Based on a Solid Foundation

The Committee concluded that the Plan has a solid foundation. The basic principles, benefits, and administration of the Plan are sound and should be continued.

The Transition was Difficult, but the Plan has Improved Over Time

The Committee concluded that the Plan got off to a fairly difficult start, particularly in the first two years. The transition from the previous system to the Personal Injury Protection Plan was inevitably challenging, but the relatively short time frame in planning and implementing such a fundamental change created a range of problems.

The Committee also found, however, that the early difficulties have been gradually overcome as SGI gained more experience with the Plan, as key resources (e.g., the Personal Injury Representatives) became more comfortable with their new client-focused role, and as supporting materials such as the benefits guide and operating manuals were developed.

The Room for Improvement is Significant

The Committee found that despite the solid foundation of the Personal Injury Protection Plan and the improvements over time, many other improvements are possible and necessary. Some of the necessary improvements became evident through experience with the Plan, and SGI itself has recommended a multitude of changes. The Committee considered a wide range of issues and alternatives and has made a significant number of recommendations that, if accepted, will improve the Plan, its benefits, and its operation, for the overall benefit of injured persons and the public in general.

The Use of Tort Law should be Expanded

The Committee gave considerable attention to the role of tort law in the Personal Injury Protection Plan. The issues surrounding this are both complex and controversial, with the fundamental question being the whether the Plan should remain "modified no-fault" or be changed back to become a "modified tort" or "add-on" plan. The Committee concluded that the Plan should remain focused on no fault, but also concluded that the use of tort law should be expanded through an extension of the scope of Section 103, and through actions involving third party liability, the use of a vehicle as a weapon, and impaired drivers who cause injuries.

Public Understanding and Public Awareness must be Priorities

The Committee found that both public awareness and public understanding of the Personal Injury Protection Plan were substantially deficient, particularly when considering the number of people affected by the Plan and the essential nature of this public insurance program. For example, it is apparent that significant numbers of individuals still do not understand that no-fault under the Personal Injury Protection Plan does not concern vehicle damage and that the Plan is directed strictly towards the provision of personal injury benefits. As well, the expectations of injured persons for their recovery and the extent of benefits to which they are entitled are often not well aligned with the realities of either the health care system or the provisions of the insurance program.

The Review Committee concluded that considerable effort is required to improve public awareness and understanding of the Personal Injury Protection Plan and what it means for Saskatchewan people. Continued deficiencies in this area only serve to undermine the very foundation of the program, which must be rooted in public trust.

Appendices

Appendix A

Part VIII – The Automobile Accident Insurance Act

PART VIII of The Automobile Accident Insurance Act

PART VIII
Personal Injury Benefits
DIVISION 1
Interpretation

Interpretation of Part

100(1) In this Part:

(a) **"accident"** means any event in which bodily injury is caused by an automobile;

(b) **"automobile"** means:

(i) any vehicle propelled by any power other than muscular force and adapted for transportation on highways, but not on rails;

(ii) **Repealed.** 1998, c.18, s.13.

(c) **"benefits"** means any benefits payable pursuant to this Part;

(d) **"bodily injury"** means any physical or mental injury, including any acquired brain injury, permanent physical or mental impairment or death;

(e) **"bodily injury caused by an automobile"** means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but does not include a bodily injury mentioned in subsection 101(2);

(f) **"child of a victim"** includes a person to whom, at the time of an accident, the victim stands in the place of a parent;

(g) **"claimant"** means a person who applies for a benefit pursuant to this Part;

(h) **"current studies"** means studies that are part of a program of studies offered by an educational institution at the secondary level or post-secondary level to which, at the time of an accident, a student has been admitted;

(i) **"dependent"**, with respect to a victim, means:

(i) the victim's spouse, including a spouse who is living separate and apart from the victim;

(ii) a former spouse of a victim who is entitled by law to receive support from the victim;

(iii) a child of a victim who, at the time of the accident, was dependent on the victim for food, clothing and other means that:

(A) at the time of the victim's death, are available to the child claiming to be dependent on the victim; and

(B) are reasonably necessary to the maintenance of life and to the continuation of the degree of health then enjoyed by the child claiming to be dependent on the victim;

(j) **"educational institution"** means a prescribed educational institution or a member of a prescribed class of educational institutions;

(k) **"elementary level"** means kindergarten, the Elementary Level and grades 6 to 8 of the Middle Level as those levels are determined pursuant to *The Education Act*;

(l) **"employment"** means any remunerative occupation;

(m) **"full-time earner"** means a victim who, at the time of an accident, holds a regular employment on a full-time basis, but does not include a student or a youth;

(n) **"income replacement benefit"** means an income replacement benefit payable pursuant to Division 4;

(o) **"industrial average wage"** means the industrial average wage mentioned in subsections (2) to (4);

(p) **"load"** means any property carried in or on an automobile;

(q) **"non-earner"** means a victim who, at the time of an accident, is not employed and who is able to work, but does not include a student or a youth;

(r) **"part-time earner"** means a victim who, at the time of an accident, holds regular employment on a part-time basis, but does not include a student or a youth;

(s) **"prescribed"** means prescribed by regulations made pursuant to this Part;

(t) **"secondary level"** means grade 9 of the Middle Level and grades 10, 11 and 12 of the Secondary Level as those levels are determined pursuant to *The Education Act*;

(u) **"spouse"** means:

(i) the wife or husband of a victim; or

(ii) a person with whom, at the time of an accident, a victim cohabits or has cohabited as a spouse:

(A) continuously for a period of not less than two years; or

(B) continuously for a period of not less than one year, if they are the parents of a child;

(v) **"student"** means a victim who, at the time of an accident, is at least 16 years of age and who attends a secondary or post-secondary educational institution on a full-time basis;

(w) **"temporary earner"** means a victim who, at the time of an accident, holds regular employment on a temporary basis, but does not include a student or a youth;

(x) **"victim"** means a person who suffers bodily injury caused by an automobile in an accident;

(y) **"youth"** means a victim who, at the time of an accident, is under 16 years of age and who attends an educational institution on a full-time basis.

(2) Subject to subsections (3) and (4), in this Part, the industrial average wage is the industrial aggregate average weekly earnings for all employees in Saskatchewan as published monthly by Statistics Canada.

(3) Where no figure for the industrial aggregate average weekly earnings for all employees in Saskatchewan is published by Statistics Canada for a month, the insurer shall determine a figure for that month in accordance with the regulations.

(4) Where, after the day this Part comes into force, Statistics Canada uses a new method to determine the industrial aggregate average weekly earnings for all employees for Saskatchewan for a particular month and the new method results in a change of more than 1% when compared with the former method, the insurer shall determine a figure in accordance with the regulations.

(5) For the purposes of this Part, a student is considered to be attending an educational institution at the secondary level or post-secondary level on a full-time basis from the day the student is admitted by the educational institution as a full-time student in a program of that level until the day the student:

(a) completes, abandons or is expelled from his or her current studies; or

(b) no longer meets the requirements of the educational institution.

(6) For the purposes of this Part, a youth is considered to be attending an educational institution on a full-time basis from the day the youth is admitted by the educational institution as a full-time student in a program of that level until the day the youth:

(a) completes, abandons or is expelled from his or her studies; or

(b) no longer meets the requirements of the educational institution.

1994, c.34, s.18; 1998, c.18, s.13.

DIVISION 2
Application of Part and Personal Injury Benefits

Application of Part

101(1) This Part applies to bodily injuries caused by an automobile arising out of an accident that occurs on or after the day this Part comes into force.

(2) Notwithstanding subsection (1), this Part does not apply to bodily injuries caused by an automobile, if the bodily injuries:

(a) are caused while the automobile is not in motion;

(b) are caused:

(i) by, or by the use of, a device that can be operated independently and that is mounted on or attached to the automobile;

(ii) by a self-propelled agricultural implement, within the meaning of *The Highway Traffic Act*;

(iii) by a wheelchair, as defined in *The Highway Traffic Act*;

(iv) by a special mobile machine, as defined in *The Highway Traffic Act*;

(iv.1) by a snowmobile, as defined in *The Snowmobile Act*;

(v) by an all terrain vehicle, as defined in *The All Terrain Vehicles Act*; or

(vi) by any other prescribed vehicle;

unless an automobile in motion is involved in the accident;

(c) are caused by the autonomous act of an animal that is part of the automobile's load;

(d) are caused by an action performed by the victim in connection with the maintenance, repair, alteration or improvement of the automobile;

(e) are caused while putting a load on or taking a load off the automobile; or

(f) are caused as the result of an automobile contest, show or race on a track or other location temporarily or permanently closed to all other automobile traffic, whether or not the automobile that caused the bodily injury is participating in the race, contest or show.

1994, c.34, s.18; 1998, c.18, s.14.

Actions respecting bodily injuries prohibited

102 Notwithstanding any other Part of this Act or any other Act or law, but subject to the other provisions of this Part:

(a) no person has a right of action respecting, arising out of or stemming from bodily injuries caused by an automobile arising out of an accident that occurs on or after the day this Part comes into force;

(b) no action or proceeding lies or may be instituted in any court respecting, arising out of or stemming from bodily injuries caused by an automobile arising out of an accident that occurs on or after the day this Part comes into force; and

(c) the right to benefits stands in lieu of all rights of action to which a person is or may be entitled to respecting, arising out of or stemming from bodily injuries caused by an automobile arising out of an accident that occurs on or after the day this Part comes into force.

1994, c.34, s.18.

Tort actions for economic loss

103(1) In this section, **"economic loss"** means the following losses resulting from bodily injuries caused by an automobile arising out of an accident:

(a) in the case of a victim who is entitled to an income replacement benefit, any actual income loss suffered by the victim in excess of the maximum yearly insurable earnings calculated pursuant to section 138;

(b) in the case of a victim who dies as a result of an accident, any actual income loss suffered by the victim's dependents in excess of the benefits provided pursuant to Division 5;

(c) in the case of a victim who is entitled to any benefit pursuant to Division 7, any actual and reasonable loss suffered by the victim in excess of the benefits to which the victim is entitled;

(d) in the case of a victim who is a worker within the meaning of *The Workers' Compensation Act, 1979* and:

(i) who is entitled to compensation for loss of earnings pursuant to section 68 of *The Workers' Compensation Act, 1979*, any actual income loss suffered by the victim in excess of the maximum yearly insurable earnings provided pursuant to sections 38 and 38.1 of that Act;

(ii) who dies as a result of an accident, any actual and reasonable loss suffered by the victim's dependents in excess of the benefits provided pursuant to sections 82, 83, 85, 87, 88 and 89 of *The Workers' Compensation Act, 1979*;

(iii) who is entitled to medical aid pursuant to *The Workers' Compensation Act, 1979*, any actual and reasonable loss suffered by the victim in excess of the benefits provided pursuant to sections 106, 108 and 113 of that Act.

(2) Notwithstanding section 102 but subject to section 44 of *The Workers' Compensation Act.1979*. a victim or dependent may bring an action for damages in the Court of Queen's Bench to recover any of the victim's or dependent's economic losses.

(3) The following rules apply in an action pursuant to this section:

(a) economic losses must be proven on a balance of probabilities;

(b) the rules of negligence, set off and apportionment of liability apply;

(c) in determining economic loss pursuant to clause (1)(a) or subclause (1)(d)(i), the Court of Queen's Bench:

(i) shall calculate any award based on the victim's actual income loss after deducting any applicable taxes pursuant to *The Income Tax Act* and the *Income Tax Act* (Canada), any premiums pursuant to the *Unemployment Insurance Act* (Canada) and any contributions pursuant to the *Canada Pension Plan*; and

(ii) shall not award any amount for income losses for the first seven days after the accident;

(d) subject to clause (e), in determining a victim's or dependent's economic loss, the Court of Queen's Bench shall deduct from any award all amounts the victim or dependent has received or is entitled to receive from any government or agency of government, from any public or private insurance scheme or from any other scheme that lessens the economic loss;

(e) in determining economic loss pursuant to clause (1)(b) or subclause (1)(d)(ii), the Court of Queen's Bench shall not deduct from any award any amounts the victim's dependents have received or are entitled to receive from a contract of life insurance, as defined in *The Saskatchewan Insurance Act*;

(f) notwithstanding *The Pre-judgment Interest Act* or any other Act or law, the Court of Queen's Bench shall not award any interest on that part of a judgment that represents a victim's or dependent's economic loss for the period commencing on the day the economic loss is suffered and ending on the day of the judgment.

(4) The deductions mentioned in subclause (3)(c)(i) are to be calculated using the victim's total income at the time of the accident and not the portion of income representing the actual income loss.

(5) Notwithstanding any other Act or law, any government or agency of government, any public or private insurer or any other person who is required or liable to pay an amount mentioned in clause (3)(d) has no right of subrogation to recover that amount.

(6) In an action pursuant to this section, on the application of any party, the Court of Queen's Bench may, in accordance with the regulations, direct that any compensation payable respecting all or any claimed categories of damages be provided for in the form of a structured compensation order.

(7) The Court of Queen's Bench may make a direction pursuant to subsection (6) at any stage in the proceedings.

1994, c.34, s.18.

Personal injury benefits

104 Subject to this Part, the insurer shall pay benefits to a victim regardless of who is responsible for the accident.

1994, c.34, s.18.

No benefits for wilful accident

105(1) No benefits are payable:

(a) to a victim or a dependent of a victim if the victim wilfully caused the accident; or

(b) to a dependent of a victim if the dependent wilfully caused the accident.

(2) A victim or dependent of a victim who disagrees with a decision of the insurer pursuant to subsection (1) may appeal that decision to the Court of Queen's Bench within 180 days of receiving the insurer's written decision.

1994, c.34, s.18.

Benefits for Saskatchewan residents

106(1) Subject to this Part, a victim who is resident in Saskatchewan at the time of the accident, and any dependent of the victim, are entitled to benefits if the accident occurs in Canada or the United States of America.

(2) Where an automobile registered in Saskatchewan is involved in an accident in Saskatchewan, the owner, the driver and any passenger in the automobile are deemed to be resident in Saskatchewan.

1994, c.34, s.18.

Benefits for non-residents

107(1) Subject to this Part, a victim of an accident that occurs in Saskatchewan who is not resident in Saskatchewan, and any dependents of the victim, are entitled to benefits:

(a) in accordance with any agreement between the insurer and a government or an agency of the government of the place of residence of the victim; or

(b) if no agreement exists, to the extent that the insurer determines that the victim is not responsible for the accident.

(2) A victim or dependent who disagrees with a decision of the insurer pursuant to clause (1)(b) may appeal that decision to the Court of Queen's Bench within 180 days of receiving the insurer's written decision.

1994, c.34, s.18.

Accidents outside Saskatchewan

108(1) Subject to the insurer's right of subrogation pursuant to this section, a victim or dependent who is entitled to any benefits respecting an accident that occurred outside Saskatchewan may exercise any right or remedy that he or she has pursuant to the law of the place where the accident occurred for compensation in excess of the benefits he or she is entitled to.

(2) Where a victim or dependent is entitled to benefits respecting an accident that occurred outside Saskatchewan, the insurer is subrogated to that victim's or dependent's rights and is entitled to recover the amount of those benefits from:

(a) any person who is not resident in Saskatchewan and who is responsible for the accident pursuant to the law of the place where the accident occurred; or

(b) any other person who is liable to pay compensation for bodily injuries caused by a person described in clause (a).

1994, c.34, s.18.

Subrogation re accidents in Saskatchewan involving non-residents

109(1) Where a victim or dependent is entitled to benefits respecting an accident that occurred in Saskatchewan, the insurer has the right to recover the amount of the benefits from:

(a) any person who is not resident in Saskatchewan and who is responsible for the accident, to the extent that he or she is responsible for the accident; and

(b) any other person who is liable to pay compensation for bodily injury caused by the person described in clause (a).

(2) An action pursuant to this section is to be commenced within two years after the day on which the insurer makes the first benefit payment to the victim or dependent.

1994, c.34, s.18..78

DIVISION 3
Rehabilitation

Rehabilitation

110(1) In this section, **"rehabilitation"** includes any or all of the following measures, programs and treatments that the insurer considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen the victim's disability caused by an accident and to facilitate the victim's recovery from the accident:

(a) physical and acquired brain injury programs and treatment;

(b) occupational and vocational training and programs;

(c) alterations to a victim's residence;

(d) modification or purchase of a vehicle for a victim;

(e) purchase of special equipment for a victim;

(f) any additional measure, program or treatment prescribed in the regulations.

(2) Subject to the regulations, the insurer may take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury and to facilitate the victim's recovery from an accident.

(3) The total maximum amount of benefits payable to a victim pursuant to this Division and Division 7 is $500,000 for each accident in which the victim suffers bodily injuries arising out of an accident.

1994, c.34, s.18.

DIVISION 4
Income Replacement Benefits

Income replacement benefits

111 Subject to this Part, an income replacement benefit is payable to the following victims:

(a) full-time earners;

(b) temporary earners;

(c) part-time earners;

(d) non-earners;

(e) students;

(f) youths.

1994, c.34, s.18.

FULL-TIME EARNERS

Full-time earners

112(1) A full-time earner is entitled to an income replacement benefit if, as a result of an accident, the full-time earner:

(a) is unable to continue the full-time employment he or she held at the time of the accident;

(b) is unable to continue any other employment that he or she held at the time of the accident in addition to the full-time employment mentioned in clause (a); or

(c) is deprived of a benefit pursuant to the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada), or any other prescribed benefit, to which he or she was entitled at the time of the accident.

(2) The insurer shall calculate the income replacement benefit pursuant to clauses (1)(a) and (b) on the basis of:

(a) the gross yearly employment income the full-time earner earned from his or her employment, if the full-time earner holds employment in the employ of another at the time of the accident;

(b) the greater of:

(i) the gross yearly employment income determined in accordance with the regulations for an employment of the same class as his or her employment; and

(ii) the gross yearly employment income the full-time earner earned from his or her employment;

if the full-time earner is self-employed at the time of the accident;

(c) the gross yearly employment income earned from all employment that the full-time earner is unable to continue because of the accident, if the full-time earner holds more than one employment at the time of the accident.

(3) The insurer shall calculate the income replacement benefit pursuant to clause (1)(c) on the basis of the benefit that would have been payable to the full-time earner.

1994, c.34, s.18.

More remunerative employment

113(1) Subject to subsection (2) and to the regulations, where the insurer is satisfied that a full-time earner who is entitled to an income replacement benefit would have held a more remunerative employment at the time of the accident but for special circumstances, the insurer shall calculate the full-time earner's income replacement benefit on the basis of the gross yearly employment income for that more remunerative employment.

(2) The employment mentioned in subsection (1) must be regular full-time employment that is compatible with the education, training, work experience and physical and intellectual abilities of the full-time earner immediately before the accident.

1994, c.34, s.18.

TEMPORARY AND PART-TIME EARNERS

Temporary and part-time earners - first 180 days

114(1) For the first 180 days after an accident, a temporary earner or part-time earner is entitled to an income replacement benefit if, as a result of the accident, the temporary earner or part-time earner:

(a) is unable to continue the employment held at the time of the accident or to hold an employment that he or she would have held during the 180-day period if the accident had not occurred; or

(b) is deprived of a benefit pursuant to the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada), or any other prescribed benefit, to which he or she was entitled at the time of the accident.

(2) The insurer shall calculate the income replacement benefit pursuant to clause (1)(a) on the basis of:

(a) the gross yearly employment income the temporary or part-time earner earned from his or her employment, if the temporary or part-time earner holds employment in the employ of another at the time of the accident;

(b) the greater of:

(i) the gross yearly employment income determined in accordance with the regulations for an employment of the same class as his or her employment; and

(ii) the gross yearly employment income the temporary or part-time earner earned from his or her employment;
if the temporary or part-time earner is self-employed at the time of the accident;

(c) the gross yearly employment income earned from all employment that the temporary or part-time earner is unable to continue because of the accident, if the temporary or part-time earner holds more than one employment at the time of the accident.

(3) The insurer shall calculate the income replacement benefit pursuant to

clause (1)(b) on the basis of the benefit that would have been payable to the temporary or part-time earner.

1994, c.34, s.18.

Temporary and part-time earners - after 180 days

115(1) Subject to subsection (5), if on the 181st and subsequent days following an accident a temporary earner or part-time earner is unable to hold the employment he or she held at the time of the accident, the temporary or part-time earner is entitled to an income replacement benefit calculated pursuant to this section.

(2) For the purposes of calculating an income replacement benefit pursuant to this section, the insurer shall determine an employment for the temporary or part-time earner pursuant to section 131.

(3) Subject to subsection (4), the insurer shall calculate the income replacement benefit on the basis of the gross yearly employment income that the insurer determines the temporary or part-time earner could have earned from the employment mentioned in subsection (2), considering the following factors:

(a) whether the temporary or part-time earner would have held the employment on a full-time or part-time basis;

(b) the work experience and earnings of the temporary or part-time earner in the five years before the accident; and

(c) any prescribed factors.

(4) An income replacement benefit pursuant to this section is not to be less than the income replacement benefit the temporary or part-time earner received pursuant to section 114.

(5) If a part-time earner elects to obtain a weekly benefit for the care of others pursuant to section 159, the part-time earner is not entitled to an income replacement benefit pursuant to this section.

1994, c.34, s.18.

NON-EARNER

Non-earners - first 180 days

116(1) For the first 180 days after an accident, a non-earner is entitled to an income replacement benefit if, as a result of the accident, the non-earner:

(a) is unable to hold an employment that he or she would have held during the 180-day period if the accident had not occurred; or

(b) is deprived of a benefit pursuant to the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada), or any other prescribed benefit, to which he or she was entitled at the time of the accident.

(2) If a non-earner is entitled to an income replacement benefit pursuant to either clause (1)(a) or (b), the non-earner is entitled to the greater income replacement benefit.

(3) Subject to the regulations, the insurer shall calculate the income replacement benefit pursuant to clause (1)(a) on the basis of the gross yearly employment income the non-earner would have earned from his or her employment.

(4) The insurer shall calculate the income replacement benefit pursuant to clause (1)(b) on the basis of the benefit that would have been payable to the non-earner.

1994, c.34, s.18.

Non-earners - after 180 days

117(1) Subject to subsection (5), if on the 181st and subsequent days following an accident a non-earner is unable to hold the employment he or she could have held at the time of the accident, the non-earner is entitled to an income replacement benefit calculated pursuant to this section.

(2) For the purposes of calculating an income replacement benefit pursuant to this section, the insurer shall determine an employment for the non-earner pursuant to section 131.

(3) Subject to subsection (4), the insurer shall calculate the income replacement benefit on the basis of the gross yearly employment income that the insurer determines the non-earner could have earned from the employment mentioned in subsection (2), considering the following factors:

(a) whether the non-earner would have held the employment on a full-time or part-time basis;

(b) the work experience and earnings of the non-earner in the five years before the accident; and

(c) any prescribed factors.

(4) An income replacement benefit pursuant to this section is not to be less than the income replacement benefit the non-earner received pursuant to section 116.

(5) If a non-earner is entitled to a weekly benefit for the care of others pursuant to section 159, the non-earner is not entitled to an income replacement benefit

pursuant to this section.

1994, c.34, s.18.

STUDENTS

Interpretation of sections 118 to 128 and 133

118 In this section, sections 119 to 128 and section 133, **"school year"**, with respect to the elementary level and secondary level, means the period commencing on July 1 of one year and ending on June 30 of the following year.

1994, c.34, s.18.

Student - loss of studies benefit

119(1) A student who is unable because of an accident to begin or to continue his or her current studies is entitled to a loss of studies benefit for the period commencing on the day that the student is unable to begin or to continue his or her current studies and ending on the day that is scheduled, at the time of the accident, for the completion of the current studies.

(2) The amount of a loss of studies benefit pursuant to this section is:

(a) if the student is admitted to studies at the secondary level at the time of the accident, $3,250 for each semester not completed at the secondary level, to a maximum of $6,500 per school year;

(b) if the student is admitted to studies at the post-secondary level at the time of the accident, $6,500 for each semester not completed at the post-secondary level, to a maximum of $13,000 per year.

1994, c.34, s.18.

Student - income replacement benefit

120(1) A student is entitled to an income replacement benefit if, as a result of an accident, the student:

(a) is unable to hold an employment that the student holds or would have held if the accident had not occurred; or

(b) is deprived of a benefit pursuant to the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada), or any other prescribed benefit, to which he or she was entitled at the time of the accident.

(2) The insurer shall calculate the income replacement benefit pursuant to clause (1)(a) on the basis of:

(a) the gross yearly employment income the student earned or would have earned from his or her employment, if the student holds or would have held employment in the employ of another at the time of the accident;

(b) the greater of:

(i) the gross yearly employment income determined in accordance with the regulations for an employment of the same class as the employment the student held or would have held; and

(ii) the gross yearly employment income the student earned or would have earned from his or her employment;
if the student is or would have been self-employed at the time of the accident;

(c) the gross yearly employment income earned or that would have been earned from all employment that the student is unable to hold because of the accident, if the student holds or would have held more than one employment at the time of the accident.

(3) The insurer shall calculate the income replacement benefit pursuant to clause (1)(b) on the basis of the benefit that would have been payable to the student.
1994, c.34, s.18.

Student - income replacement benefit if unable to begin or resume studies

121(1) If a student is unable because of an accident to begin or to continue his or her studies or to hold employment after the day scheduled at the time of the accident for completion of his or her current studies, the student is entitled to an income replacement benefit for as long as he or she is unable to hold employment because of the accident.

(2) The insurer shall calculate an income replacement benefit pursuant to subsection (1) on the basis of a gross yearly employment income equal to a yearly average computed on the basis of the industrial average wage for each of the 12 months preceding the July 1 following the end of the school year, in the case of a secondary student, or year, in the case of a post-secondary student, scheduled at the time of the accident for completion of the student's current studies.

1994, c.34, s.18.

Student - able to study but unable to hold employment

122(1) A student who resumes his or her current studies but who is unable to hold any employment after completing his or her current studies is entitled to a loss of studies benefit and an income replacement benefit calculated pursuant to this section if, as a result of an accident:

(a) the student's current studies end before the day that was scheduled for their completion at the time of the accident; and

(b) the student is unable to hold any employment after completion of the student's current studies.

(2) The loss of studies benefit mentioned in subsection (1) is payable on the day the student's current studies end and is payable for each semester at the secondary level or post-secondary level not completed by the student.

(3) The amount of a loss of studies benefit mentioned in subsection (1) is:

(a) if the student is admitted to studies at the secondary level at the time of the accident, $3,250 for each semester not completed at the secondary level, to a maximum of $6,500 per school year;

(b) if the student is admitted to studies at the post-secondary level at the time of the accident, $6,500 for each semester not completed at the post-secondary level, to a maximum of $13,000 per year.

(4) The income replacement benefit mentioned in subsection (1) is payable after the day scheduled for the completion of the student's current studies at the time of the accident and for as long as the student is unable to hold employment.

(5) The insurer shall calculate the income replacement benefit mentioned in subsection (1) on the basis of a gross yearly employment income equal to a yearly average computed on the basis of the industrial average wage for each of the 12 months preceding the July 1 that follows the end of the school year, in the case of a secondary student, or year, in the case of a post-secondary student, scheduled at the time of the accident for completion of the student's current studies.

1994, c.34, s.18.

Student entitled to greatest income replacement benefit

123 A student is entitled to the greatest income replacement benefit of those calculated pursuant to section 120, 121 or 122.

1994, c.34, s.18.

YOUTHS

Youth - loss of studies benefit

124(1) A youth who is unable because of an accident to begin or continue his or her studies at an educational institution is entitled to a loss of studies benefit for the period commencing on the day that he or she is unable to begin or to continue his or her studies and ending on the day that the youth reaches 16 years of age.

(2) The amount of a loss of studies benefit pursuant to this section is:

(a) $3,500 for each school year not completed at the elementary level;

(b) $3,250 for each semester not completed at the secondary level, to a maximum of $6,500 per school year.

1994, c.34, s.18.

Youth - income replacement benefit

125(1) A youth is entitled to an income replacement benefit if, as a result of an accident, the youth:

(a) is unable to hold an employment that the youth holds or would have held if the accident had not occurred; or

(b) is deprived of a benefit pursuant to the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada), or any other prescribed benefit, to which he or she was entitled at the time of the accident.

(2) The insurer shall calculate the income replacement benefit pursuant to clause (1)(a) on the basis of:

(a) the gross yearly employment income the youth earned or would have earned from his or her employment, if the youth holds or would have held employment in the employ of another at the time of the accident;

(b) the greater of:

(i) the gross yearly employment income determined in accordance with the regulations for an employment of the same class as the employment the youth held or would have held; and

(ii) the gross yearly employment income the youth earned or would have earned from his or her employment;

if the youth is or would have been self-employed at the time of the accident;

(c) the gross yearly employment income earned or that would have been earned from all employment that the youth is unable to hold because of the accident, if the youth holds or would have held more than one employment at the time of the accident.

(3) The insurer shall calculate the income replacement benefit pursuant to clause (1)(b) on the basis of the benefit that would have been payable to the youth.

1994, c.34, s.18.

Youth - income replacement benefit if unable to begin or resume studies

126(1) If a youth is unable because of an accident to begin or to continue his or her studies at an educational institution or to hold employment after the day the youth reaches 16 years of age, the youth is entitled to an income replacement benefit for as long as he or she is unable to hold employment because of the accident.

(2) The insurer shall calculate an income replacement benefit pursuant to subsection (1) on the basis of a gross yearly employment income equal to a yearly average computed on the basis of the industrial average wage for each of the 12 months preceding the July 1 that follows the end of the school year in which the youth reaches 16 years of age.

1994, c.34, s.18.

Youth - able to study but unable to hold employment

127(1) A youth who resumes his or her studies at an educational institution but who is unable to hold any employment after completing his or her studies is entitled to a loss of studies benefit and an income replacement benefit calculated pursuant to this section if, as a result of an accident:

(a) the youth's studies end before the day that was scheduled for their completion at the time of the accident; and

(b) the youth is unable to hold any employment after reaching 16 years of age.

(2) The loss of studies benefit mentioned in subsection (1) is payable on the day the youth's studies end and is payable for each school year at the elementary level or semester at the secondary level not completed by the student.

(3) The amount of a loss of studies benefit mentioned in subsection (1) is:

(a) $3,500 for each school year not completed at the elementary level;

(b) $3,250 for each semester not completed at the secondary level, to a maximum of $6,500 per school year.

(4) The income replacement benefit mentioned in subsection (1) is payable after the youth reaches 16 years of age.

(5) The insurer shall calculate the income replacement benefit mentioned in subsection (1) on the basis of a gross yearly employment income equal to a yearly average computed on the basis of the industrial average wage for each of the 12 months preceding the July 1 that follows the end of the school year in which the youth reaches 16 years of age.

1994, c.34, s.18.

Youth entitled to greatest income replacement benefit

128 A youth is entitled to the greatest income replacement benefit of those calculated pursuant to section 125, 126 or 127.

1994, c.34, s.18.

TERMINATION OF INCOME REPLACEMENT BENEFITS

Termination of income replacement benefit

129(1) Notwithstanding any other provision of this Division, a victim ceases to be entitled to an income replacement benefit when any of the following occurs:

(a) the victim is able to hold the employment that he or she held at the time of the accident;

(b) the victim is able to hold the more remunerative employment mentioned in section 113;

(c) the victim is able to hold an employment determined for the victim pursuant to section 131;

(d) one year has expired from the day the victim is able to hold an employment determined for the victim pursuant to section 132 or 133;

(e) the victim holds an employment from which the gross yearly employment income is equal to or greater than the gross yearly employment income on which victim's income replacement benefit is calculated;

(f) a 180-day period mentioned in section 114 or 116 has expired;

(g) the victim dies.

(2) Notwithstanding clause (1)(d), if a victim falls within the circumstances described in subsection 139(1), the victim's income replacement benefit is to be reduced pursuant to section 139 and is not to be terminated pursuant to subsection (1).

(3) Notwithstanding clauses (1)(a) to (c), a full-time earner or a part-time earner who lost his or her employment because of the accident is entitled to continue to receive his or her income replacement benefit commencing on the day he or she regains the ability to hold the employment and ending on the expiration of:

(a) 30 days, if the entitlement to the income replacement benefit lasted for at least 90 days and not more than 180 days;

(b) 90 days, if the entitlement to the income replacement benefit lasted for more than 180 days and not more than one year;

(c) 180 days, if the entitlement to the income replacement benefit lasted for more than one year and not more than two years;

(d) one year, if the entitlement to the income replacement benefit lasted for more than two years.

1994, c.34, s.18.

No income replacement benefit if regularly incapable of working

130 Notwithstanding any other provision of this Division, a victim who, before an accident, is regularly incapable of holding employment for any reason except age is not entitled to an income replacement benefit.

1994, c.34, s.18.

DETERMINATION OF EMPLOYMENT

Determination of employment - for 181st day after accident

131(1) Where the insurer is required pursuant to this Division to determine an employment for a victim from the 181st day after an accident, the insurer shall consider:

(a) the education, training, work experience and physical and intellectual abilities of the victim immediately before the accident; and

(b) any other prescribed factors.

(2) An employment determined by the insurer must be an employment that the victim could have held:

(a) on a regular and full-time basis immediately before the accident; or

(b) if it would not have been possible for the victim to hold employment on a regular and full-time basis, on a part-time basis immediately before the accident.

1994, c.34, s.18.

Determination of employment after second anniversary of accident

132 Following the second anniversary date of an accident, the insurer may determine an employment for a victim of the accident who is able to work but who is unable because of the accident to hold the employment mentioned in section 112 or 113 or determined pursuant to section 131.

1994, c.34, s.18.

Determination of employment for student or youth

133 The insurer may determine an employment for a student or youth at any time from the scheduled day of the end of the student's current studies or the youth™s studies if the student or youth:

(a) is able to work; and

(b) is not able because of an accident to hold an employment from which the gross yearly employment income is equal to or greater than the gross yearly employment income that would have applied to the victim pursuant to section 121, 122, 126 or 127 if the victim had been unable to hold employment because of the accident.

1994, c.34, s.18.

Factors applicable to determinations pursuant to sections 132 and 133

134 In determining an employment pursuant to section 132 or 133, the insurer shall consider the following factors:

(a) the education, training, work experience and physical and intellectual abilities of the victim at the time of the determination;

(b) any knowledge or skill acquired by the victim in a rehabilitation program approved pursuant to this Part;

(c) whether the employment is available in the region of Saskatchewan in which the victim resides;

(d) the employment that the victim is able to hold:

(i) on a regular and full-time basis; or

(ii) if it would not be possible for the victim to hold employment on a regular and full-time basis, on a part-time basis;

(e) any other prescribed factors.

1994, c.34, s.18.

CALCULATION OF INCOME REPLACEMENT BENEFIT

Interpretation of sections 135 to 138

135 In this section and in sections 136 to 138:

(a) **"gross yearly employment income"**, with respect to a victim, means the gross yearly employment income of the victim's employment that the insurer is required to use or that the insurer determines pursuant to this Division;

(b) **"maximum yearly insurable earnings"** means the maximum yearly insurable earnings calculated pursuant to section 138;

(c) **"net income"** means net income calculated pursuant to section 137.

1994, c.34, s.18.

Amount of income replacement benefit

136(1) Subject to the other provisions of this Division, the amount of an income replacement benefit that a victim is entitled to pursuant to this Division is equal to 90% of the victim's net income, calculated on a yearly basis.

(2) Subject to sections 139 and 140, the income replacement benefit of a full-time earner or of a victim for whom the insurer determines an employment pursuant to section 131, 132 or 133 is to be not less than the amount of an income replacement benefit calculated on the basis of a gross yearly employment income determined on the basis of:

(a) the minimum wage established pursuant to *The Labour Standards Act*; and

(b) except in the case of a part-time employment, the number of hours of work per week set out in subsection 6(1) of *The Labour Standards Act*.

(3) Notwithstanding any other provision of this Division, no claimant is entitled to an income replacement benefit for the first seven days from the date of the accident.

(4) Subsection (3) does not apply to an income replacement benefit payable pursuant to section 143.

1994, c.34, s.18.

Calculation of net income

137(1) A victim's net income is equal to the amount calculated in accordance with the following formula:

NI = GYEI - D

where:

NI is the victim's net income;

GYEI is the lesser of the victim's gross yearly employment income and the maximum yearly insurable earnings; and

D is an amount calculated by the insurer in accordance with this section and the regulations for income tax pursuant to *The Income Tax Act* and the *Income Tax Act* (Canada), premiums pursuant to the *Unemployment Insurance Act* (Canada) and contributions pursuant to the *Canada Pension Plan*.

(2) For the purposes of calculating D pursuant to subsection (1):

(a) the insurer shall use the Acts mentioned in subsection (1) as they exist on December 31 of the year before the year for which the insurer is making the calculation; and

(b) the insurer shall take into account the number of dependents of the victim at the time of the calculation.

(3) For the purpose of determining net income pursuant to this section, the gross yearly employment income of a victim includes any benefits pursuant to the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada), or any other prescribed benefit, to which the victim would have been entitled at the time of the accident.

1994, c.34, s.18.

Maximum yearly insurable earnings

138(1) The amount of the maximum yearly insurable earnings for 1995 is $50,000.

(2) The amount of the maximum yearly insurable earnings for 1996 and each year after 1996 is the amount calculated in accordance with the following formula:

$$\text{MYIE} = \$50{,}000 \times \frac{\text{IAWY}}{\text{IAW95}}$$

where:

MYIE is the maximum yearly insurable earnings for the year;

IAWY is the average of the average industrial average wage for the 12 months before July 1 of the year before the year for which the maximum yearly insurable earnings are being calculated; and

IAW95 is the average of the industrial average wage for the 12 months before July 1, 1994.

(3) For the purposes of this section, the insurer shall use the most recent data

available from Statistics Canada on October 1 of the year before the year for which the maximum yearly insurable earnings are being calculated.

1994, c.34, s.18.

INCOME REPLACEMENT BENEFITS FOR REDUCED INCOME

Reduction where income from determined employment is less than income previously computed by insurer

139(1) Subject to the other provisions of this Division, the insurer shall reduce a victim's income replacement benefit pursuant to subsection (2) if:

(a) the victim is able to hold an employment determined for the victim pursuant to section 132 or 133; and

(b) because of bodily injuries caused by an automobile arising out of an accident, the victim earns a gross yearly employment income from the employment that is less than the gross yearly employment income used by the insurer to compute the income replacement benefit that the victim was receiving before the employment was determined pursuant to section 132 or 133.

(2) The insurer shall reduce the victim's income replacement benefit pursuant to subsection (1) by an amount calculated in accordance with the following formula:

$$RIRB = FIRB - NI$$

where:

RIRB is the reduced income replacement benefit;

FIRB is the former income replacement benefit the victim was receiving at the time the employment was determined pursuant to section 132 or 133; and

NI is the net income that the victim earns or could earn from the employment determined pursuant to section 132 or 133.

1994, c.34, s.18.

Reduction where victim earns reduced income

140(1) Subject to subsection (3), the insurer shall reduce a victim's income replacement benefit pursuant to subsection (2) where the victim earns a gross yearly employment income that is less than the gross yearly employment income used by the insurer to compute the victim's income replacement benefit.

(2) The insurer shall reduce the victim's income replacement benefit by an amount calculated in accordance with the following formula:

RIRB = IRB - (75% x NIE)

where:

RIRB is the reduced income replacement benefit;

IRB is the income replacement benefit before the reduction; and

NIE is the net income the victim earns from the employment.

(3) This section does not apply to a victim whose income replacement benefit is reduced pursuant to section 139.

1994, c.34, s.18.

REPLACEMENT WORKER

Replacement worker

141(1) Notwithstanding any other provision of this Division but subject to the regulations, a victim who is entitled to an income replacement benefit pursuant to this Division and who, at the time of the accident, is self-employed may elect to receive a benefit to hire a replacement worker.

(2) A victim who makes an election pursuant to subsection (1) may not revoke that election.

(3) Subject to subsection (4), the amount of a benefit pursuant to this section is the amount required to hire a replacement worker to do the labour of the victim during the period that the victim would be entitled to an income replacement benefit if the victim had elected to receive an income replacement benefit.

(4) The maximum amount of a benefit pursuant to this section is $550 per week.

1994, c.34, s.18.

RELAPSE

Income replacement benefit after relapse

142(1) A victim who suffers a relapse of a bodily injury is entitled to an income replacement benefit as though the victim had been entitled to the income replacement benefit from the day of the accident to the day of the relapse, if the victim suffers the relapse within two years after:

(a) the end of the last period for which the victim received an income replacement benefit, other than an income replacement benefit pursuant to section 139 or 140; or

(b) the day of the accident, if the victim was not entitled to an income replacement benefit before the relapse.

(2) The victim is entitled to an income replacement benefit pursuant to subsection (1) from the day of the relapse.

(3) The insurer shall calculate the income replacement benefit pursuant to subsection (1) on the basis of the greater of:

(a) the gross yearly employment income used by the insurer immediately before the end of the period mentioned in clause (1)(a); and

(b) the gross yearly employment income of the victim at the time of the relapse.

1994, c.34, s.18.

Relapse after more than two years

143 A victim is entitled to an income replacement benefit calculated by the insurer on the basis that the relapse is a second accident if the relapse occurs more than two years after:

(a) the end of the last period for which the victim received an income replacement benefit, other than an income replacement benefit pursuant to section 139 or 140; or

(b) the day of the accident, if the victim was not entitled to an income replacement benefit before the relapse.

1994, c.34, s.18.

Victim entitled to greater benefit

144 If a victim is receiving an income replacement benefit pursuant to this Division, other than pursuant to subsection 129(2) or section 139 or 140, and becomes entitled to an income replacement benefit respecting a relapse or second accident pursuant to section 142 or 143, the victim is entitled to whichever income replacement benefit is the greater.

1994, c.34, s.18.

DIVISION 5
Death Benefits

Interpretation of Division

145 In this Division:

(a) **"deceased victim"** means a victim who dies as a result of an accident;

(b) **"surviving spouse"** means a surviving spouse of a deceased victim and includes a former spouse of a deceased victim who, at the time of the accident, was entitled by law to receive spousal support from the victim.

1994, c.34, s.18.

Death benefit - surviving spouse

146(1) Subject to subsections (3) to (5), a surviving spouse is entitled to a death benefit calculated in accordance with the following formula:

DB = (50% x IRB)

where:

DB is the death benefit payable; and

IRB is the weekly income replacement benefit that the deceased victim would have been entitled to arising out of the accident if the victim had survived the accident.

(2) The death benefit payable pursuant to subsection (1) is payable until the date that the surviving spouse dies.

(3) The minimum death benefit payment that a surviving spouse is entitled to receive pursuant to subsection (1) is $45,000.

(4) For the purposes of subsection (3), the insurer shall capitalize, in accordance with the regulations, the surviving spouse's death benefit pursuant to subsection (1).

(5) Where, at the time of the accident, there are children who were dependent on the surviving spouse and who were dependants of the victim, the surviving spouse is entitled to an additional benefit in the amount calculated in accordance with the following formula:

B = (5% x IRB) x DC

where:

B is the benefit payable;

IRB is the weekly income replacement benefit that the deceased victim would have been entitled to arising out of the accident if the victim had survived the accident; and

DC is the number of the victim's dependent children.

(6) The benefit mentioned in subsection (5) respecting a dependent child is payable until that dependent child reaches 21 years of age.

1994, c.34, s.18.

Death benefit - surviving dependent children

147(1) Where both of a dependent child's parents die in an accident, the dependent child is entitled to the death benefit mentioned in subsection 146(1) for each parent as if the dependent child were a surviving spouse of each parent.

(2) Where a deceased victim is the sole parent of a dependent child, the dependent child is entitled to the death benefit mentioned in subsection 146(1) as if the dependant child were the surviving spouse of the deceased victim.

(3) Where, at the time of an accident, a deceased victim did not leave a surviving spouse and there is a child who was a dependent of the victim, the dependant child is entitled to the death benefit mentioned in subsection 146(1) as if the dependent child were a surviving spouse of the deceased victim.

(4) The death benefit mentioned in subsection (1), (2) or (3) is payable only until the dependent child reaches 21 years of age.

(5) In a case where subsection (1), (2) or (3) applies and where there is more than one dependent child, the following rules apply:

(a) each dependent child is entitled to an equal share of the death benefit pursuant to this subsection as long as that dependent child remains under 21 years of age;

(b) the dependent children are entitled to the death benefit mentioned in subsection 147(1) on the basis of the youngest dependent child being considered as the surviving spouse;

(c) the death benefit mentioned in clause (b) is payable until the youngest dependent child reaches 21 years of age;

(d) the dependent children are entitled to the benefit mentioned in subsection 146(5) calculated on the number of dependent children, but not including the youngest dependent child;

(e) the benefit mentioned in clause (d) is payable until the second youngest dependent child reaches 21 years of age.

1994, c.34, s.18.

Capitalization of death benefit

148(1) A surviving spouse who is entitled to a benefit pursuant to section 146 or a dependent child who is entitled to a benefit pursuant to section 147 may elect to have the benefit capitalized and paid out as a lump sum.

(2) An election pursuant to subsection (1) must be made within five years of the date of the accident and is not revocable.

(3) The insurer shall undertake the capitalization in the prescribed manner.

1994, c.34, s.18.

Lump sum death benefit - estate

149 If, on the day a deceased victim dies, the victim has no dependents, the deceased victim's estate is entitled to a lump sum benefit of $10,000.

1994, c.34, s.18.

Lump sum funeral benefit

150 The deceased victim's estate is entitled to a lump sum benefit of $5,000 for the deceased victim's funeral.

1994, c.34, s.18.

Payment of lump sum death benefit in periodic instalments to dependent

151 On the application of a dependent entitled to a lump sum death benefit pursuant to this Division, the insurer may pay the benefit over a period, not exceeding 20 years, in periodic instalments corresponding to a proportion of the value of the lump sum death benefit.

1994, c.34, s.18.

Educational benefit for dependent spouse

152(1) Subject to the regulations, the insurer may pay an educational benefit to a surviving spouse who, at the time of an accident, was dependent on the deceased victim.

(2) An educational benefit mentioned in subsection (1) is to be used for the education of the surviving spouse.

(3) The maximum amount of an educational benefit pursuant to this section is $30,000.

1994, c.34, s.18.

DIVISION 6
Permanent Impairment Benefit

Interpretation of Division

153 In this Division, “permanent impairment” includes a permanent anatomical or physiological deficit, a permanent disfigurement, a permanent acquired brain injury or any other permanent impairment prescribed in the regulations.

1994, c.34, s.18.

Lump sum benefit - permanent impairment

154 Subject to this Division and the regulations, a victim who suffers a permanent impairment because of an accident is entitled to a lump sum benefit for the permanent impairment.

1994, c.34, s.18.

Benefit not payable if victim dies

155(1) Subject to subsection (2), a lump sum benefit for a permanent impairment is not payable if the victim dies of a cause related to an accident.

(2) If the victim dies of a cause unrelated to an accident and, on the day of his or her death, the victim is suffering a permanent impairment arising out of the accident, the insurer shall:

(a) estimate the amount of the lump sum benefit that it would have awarded to the victim respecting the permanent impairment if the victim had not died; and

(b) pay that lump sum benefit to the victim’s estate.

1994, c.34, s.18.

Evaluation of permanent impairment

156(1) The insurer shall evaluate a victim’s permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

(2) If a victim’s permanent impairment is not listed on the prescribed schedule of permanent impairments, the insurer shall determine a percentage for the permanent impairment using the prescribed schedule as a guide.

1994, c.34, s.18.

Calculation of lump sum benefit

157(1) Subject to subsection (2), the insurer shall calculate the lump sum benefit for a permanent impairment payable pursuant to this Division in accordance with the following formula:

LSBPI = $125,000 x P

where:

LSBPI is the lump sum benefit for the permanent impairment; and

P is the percentage determined pursuant to section 156.

(2) The minimum amount of a lump sum benefit for a permanent impairment pursuant to this Division is $500 and the maximum amount is $125,000.

1994, c.34, s.18.

DIVISION 7
Benefits for Expenses

Benefits for personal assistance expenses

158(1) Subject to the regulations, if a victim is unable because of an accident to care for himself or herself or to perform the essential activities of everyday life without assistance, the insurer may pay a benefit to reimburse the victim for expenses related to personal home assistance.

(2) The maximum amount of a benefit pursuant to this section is $550 per week.

1994, c.34, s.18.

Weekly benefit for care of others

159(1) Subject to subsection (5), a non-earner is entitled to a weekly benefit pursuant to this section if the non-earner's main occupation at the time of an accident was taking care, without remuneration, of persons who:

(a) are under 16 years of age; or

(b) are regularly unable to hold any employment.

(2) A part-time earner may elect to receive a weekly benefit pursuant to this section if the part-time earner's main occupation at the time of an accident was taking care, without remuneration, of persons who:

(a) are under 16 years of age; or

(b) are regularly unable to hold any employment.

(3) The insurer shall pay the weekly benefit pursuant to this section in the amount of:

(a) $300, if one person described in subsection (1) is cared for;

(b) $325, if two persons described in subsection (1) are cared for;

(c) $350, if three persons described in subsection (1) are cared for;

(d) $400, if four or more persons described in subsection (1) are cared for.

(4) A part-time earner or non-earner is entitled to receive the weekly benefit pursuant to this section as long as the part-time earner or non-earner is unable to care for the persons described in subsection (1).

(5) A non-earner is not entitled to receive a weekly benefit pursuant to this section if the non-earner is entitled to an income replacement benefit pursuant to clause 116(1)(a).

(6) The insurer shall adjust or terminate, in accordance with the regulations, the weekly benefit pursuant to this section at the end of the week in which:

(a) the number of persons described in subsection (1) changes; or

(b) the part-time earner or non-earner is able to resume the care of the persons described in subsection (1).

1994, c.34, s.18.

Part-time earner or non-earner - election of benefits

160(1) At any time after the 180th day following an accident, a part-time earner or non-earner who is receiving a weekly benefit pursuant to section 159 may elect to:

(a) continue to receive the weekly benefit; or

(b) receive an income replacement benefit pursuant to section 115, in the case of the part-time earner, or section 117, in the case of the non-earner.

(2) Before the 181st day following an accident, the insurer shall provide the part-time earner or non-earner with information to assist the earner to make the election.

1994, c.34, s.18.

Weekly benefit - other victims

161(1) Subject to subsection (5), a victim described in subsection (2) is entitled to a weekly benefit pursuant to this section if the victim becomes unable because of an accident to care for persons who:

(a) are under 16 years of age; or

(b) are regularly unable to hold any employment.

(2) For the purposes of subsection (1) a victim must be:

(a) a full-time earner;

(b) a temporary earner;

(c) a part-time earner holding more than one regular part-time employment for a total of not less than 28 hours per week;

(d) a student;

(e) a part-time earner or non-earner who elects pursuant to section 160 to receive an income replacement benefit.

(3) The insurer shall pay the weekly benefit pursuant to this section in the amount of:

(a) $75, if one person described in subsection (1) is cared for;

(b) $100, if two persons described in subsection (1) are cared for;

(c) $125, if three persons described in subsection (1) are cared for;

(d) $150, if four or more persons described in subsection (1) are cared for.

(4) A victim is entitled to receive the weekly benefit pursuant to this section as long as the victim is unable to care for the persons described in subsection (1).

(5) A victim is entitled to receive a weekly benefit pursuant to this section only if the victim's spouse is unable to care for the persons described in subsection (1) because of the spouse's:

(a) illness;

(b) disability;

(c) work; or

(d) studies outside the spousal residence.

1994, c.34, s.18.

Benefit - family enterprise

162(1) A victim is entitled to a benefit pursuant to this section if the victim:

(a) at the time of an accident was working without remuneration in a family enterprise; and

(b) is unable because of the accident to perform his or her regular duties in the family enterprise.

(2) The victim is entitled to the benefit pursuant to this section during the first 180 days following the accident for the purpose of having the victim's regular duties performed during those 180 days.

(3) The insurer shall determine the amount of the benefit pursuant to this section having regard to the prescribed factors.

(4) The maximum amount of the benefit pursuant to this section is $550 per week.

1994, c.34, s.18.

Benefits - other expenses

163(1) Subject to the regulations, a victim is entitled to a benefit to reimburse the victim for paying for any of the following items:

(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

(b) the purchase of prostheses or orthopaedic devices;

(c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;

(d) any other prescribed expenses.

(2) The amount of a benefit pursuant to this section is the amount of the expense that the victim is not entitled to be reimbursed for pursuant to any other Act.

(3) A person who pays an expense mentioned in subsection (1) on behalf of a victim is entitled to a benefit to reimburse the person for paying the expense.

1994, c.34, s.18.

Benefits - accompanying victim

164 Subject to the regulations, a person who accompanies a victim because of a victim's physical or mental condition or age so that the victim can receive medical or paramedical care is entitled to a benefit in an amount to reimburse that person for that person's transportation, lodging and other expenses.

1994, c.34, s.18.

DIVISION 8
Claims

Interpretation of Division

165 In this Division and in section 185, **"practitioner"** means:

(a) a physician or surgeon;

(b) a dentist;

(c) a physical therapist;

(d) an optometrist;

(e) a psychologist;

(f) a chiropractor;

(g) a massage therapist;

(h) any prescribed practitioner.

1994, c 34, s.18.

Application

166 A claimant shall make an application for a benefit in accordance with the regulations.

1994, c.34, s.18.

Time limitation for claims

167(1) Subject to subsections (2) to (5), a claimant shall make an application for a benefit:

(a) within two years from the date of the accident on which the claim is based; or

(b) within two years from the date on which an observation of symptoms of a bodily injury is first made by a practitioner if those symptoms are not apparent immediately after the accident but are observed by the practitioner within two years from the date of the accident.

(2) A claimant shall make an application for a benefit based on the death of a victim within two years from the date of the victim's death.

(3) If a claimant is a minor on the date of an accident on which the claim is based, the claimant shall make an application for a benefit within two years from the date that the claimant reached 18 years of age.

(4) The time limitation set out in this section is postponed for a claimant who is by reason of mental disorder not competent to manage his or her estate until the claimant:

(a) becomes competent to manage his or her estate; or

(b) is represented by a personal guardian or property guardian appointed pursuant to *The Public Trustee Act* or *The Dependent Adults Act* who is aware of a claim and has the legal capacity to make the claim on behalf of the claimant.

(5) The insurer may waive a time limitation set out in this section if it is satisfied that the claimant had a reasonable excuse for failing to make an application within the time limit.

1994, c.34, s.18.

Information from claimants and recipients

168(1) Every claimant and every person who receives a benefit shall provide any information, and any authorization necessary to obtain information, that is requested by the insurer for the purposes of this Part.

(2) Subject to the regulations, the insurer shall promptly release to a claimant, at the claimant's request, all of the insurer's information respecting the claimant or his or her claim that the claimant may reasonably require for the purposes of this Part.

1994, c.34, s.18.

Proof of salary

169 Within six days after receiving a written request from the insurer, an employer or former employer shall provide the insurer with proof of the earnings of the victim while employed by the employer or former employer.

1994, c.34, s.18.

Examination by practitioner

170(1) If requested by the insurer, a victim shall undergo an examination by a practitioner chosen by the victim.

(2) If required by the insurer, a victim shall undergo an examination by a practitioner chosen by the insurer.

(3) The insurer shall bear the expense of any examination made pursuant to this section.

(4) A practitioner shall conduct an examination pursuant to this section in accordance with the regulations.

1994, c.34, s.18.

Transportation and lodging expenses for examination

171(1) A victim who undergoes an examination pursuant to section 170 is entitled to a benefit to reimburse his or her transportation, lodging and other expenses incurred in connection with the examination.

(2) A person who accompanies a victim because of a victim's physical or mental condition or age so that the victim can attend an examination is entitled to a benefit in an amount to reimburse that person for that person's transportation, lodging and other expenses.

(3) The insurer shall calculate the amount of a benefit pursuant to this section in accordance with the regulations.

1994, c.34, s.18.

Report of examination

172(1) A practitioner who examines a victim at the request of the insurer pursuant to section 170 shall make a report to the insurer on the condition of the victim and on any other related matter requested by the insurer.

(2) Where the insurer obtains a report respecting an examination conducted pursuant to section 170, the insurer, at the request of the victim who underwent the examination, shall provide a copy of the report to any practitioner designated by the person.

1994, c.34, s.18.

Report of accident

173 Within six days of receiving a written request from the insurer, a practitioner who or hospital that is consulted by a victim or treats a victim after an accident shall provide the insurer with a report respecting:

(a) the consultation or the treatment; and

(b) any finding or recommendation relating to the consultation or treatment.

1994, c.34, s.18.

Reimbursement for costs of report

174 Subject to the regulations, a person is entitled to a benefit to reimburse the person for his or her expenses in obtaining a report from a practitioner if:

(a) the person applied for a review or made an appeal pursuant to Division 11 and filed the report in support of the review or appeal; and

(b) the review or appeal mentioned in clause (a) is allowed.

1994, c.34, s.18.

Claimant to advise of changes

175 Every claimant and every person receiving a benefit shall notify the insurer without delay of any changes that affect or that might affect his or her right to claim or receive a benefit or the amount of a benefit that he or she is claiming or receiving.

1994, c.34, s.18.

Insurer to advise and assist claimants

176 The insurer shall advise and assist claimants and shall endeavour to ensure that claimants are informed of and receive the benefits to which they are entitled.

1994, c.34, s.18.

DIVISION 9
Payment of Benefits

Payment of income replacement benefits

177(1) Subject to subsections (2) to (4), the insurer shall pay an income replacement benefit to the person entitled to it once every 14 days.

(2) The insurer may pay an income replacement benefit to the person entitled to it in a single payment equivalent to the capital value of the income replacement benefit if:

(a) the amount paid or to be paid every 14 days is less than $100; or

(b) the person entitled to it has not been resident in Saskatchewan for at least one year.

(3) Notwithstanding any other provision of this Part, no person is entitled to an income replacement benefit for any period that the person is serving a sentence of imprisonment.

(4) If a person mentioned in subsection (3) is acquitted of the offence for which the imprisonment was served, the insurer shall remit to the person the amount of the income replacement benefit that would have been paid to him or her if he or she had

not been imprisoned, together with interest, from the day the income replacement benefit was suspended until the day of payment.

1994, c.34, s.18.

Payment of weekly benefit for care of others

178 The insurer shall pay the weekly benefit for the care of others pursuant to section 159 or 161 to the person entitled to it once every 14 days.

1994, c.34, s.18.

Payment of loss of studies benefit

179 The insurer shall pay a loss of studies benefit payable pursuant to section 119, 122, 124 or 127 to the victim entitled to it at the end of the semester or school year, as the case may be, that the victim did not complete.

1994, c.34, s.18.

Payment in advance of decision respecting entitlement

180(1) After receiving an application for a benefit but before making a decision respecting the claimant's entitlement, the insurer may pay a benefit that the claimant is or might be entitled to if the insurer is satisfied that the application is well founded.

(2) Notwithstanding Division 12, the insurer is not entitled to recover any benefits paid pursuant to subsection (1) unless the benefits were obtained by fraud.

1994, c.34, s.18.

Payment of benefits to reimburse expenses

181 The insurer shall pay a benefit related to reimbursing expenses pursuant to Division 3 or 7 in one or more instalments of equal or approximately equal value to:

(a) the person entitled to the benefit; or

(b) the person to whom the amount of expenses is due.

1994, c.34, s.18.

Payment to estate

182 If a benefit is payable to a person but not paid on the day the person dies, the insurer shall pay the benefit to the person's estate.

1994, c.34, s.18.

Payment to guardians

183 If a person who is entitled to a benefit has a property guardian appointed pursuant to *The Dependent Adults Act* or *The Public Trustee Act* who is authorized to receive the payment, the insurer shall pay the benefit to the property guardian.

1994, c.34, s.18.

Benefits, other than income replacement benefits, not subject to seizure or assignment

184(1) Subject to *The Enforcement of Maintenance Orders Act* and to the regulations, benefits, other than income replacement benefits, are exempt from garnishment, seizure, attachment, execution and any other process or claim.

(2) A person who is entitled to any benefits, other than income replacement benefits, may not assign the benefits to another person, and any purported assignment is null and void.

1994, c.34, s.18.

Refusal, reduction, suspension or termination of benefits

185 The insurer may refuse to pay a benefit to a person or may reduce the amount of a benefit or suspend or terminate the benefit, where the person:

(a) knowingly provides false or inaccurate information to the insurer;

(b) refuses or neglects to produce information reasonably required by the insurer for the purposes of this Part or to provide an authorization reasonably required by the insurer to obtain the information;

(c) without valid reason, refuses to return to his or her former employment, leaves an employment that he or she could continue to hold, or refuses a new employment;

(d) without valid reason, neglects or refuses to undergo an examination by a practitioner, or interferes with an examination by a practitioner, requested or required by the insurer;

(e) without valid reason, refuses, does not follow or is not available for treatment recommended by a practitioner and the insurer;

(f) without valid reason, prevents or delays recovery by his or her activities;

(g) without valid reason, does not follow or participate in a rehabilitation program made available by the insurer; or

(h) prevents or obstructs the insurer from exercising any of its rights of recovery or subrogation pursuant to this Part.

1994, c.34, s.18.

No Division 6 benefits if victim at fault

186(1) Notwithstanding any other provision of this Part, a victim is not entitled to any lump sum benefits for permanent impairment pursuant to Division 6 to which the victim would otherwise be entitled if:

(a) the victim is more than 50% responsible for an accident; and

(b) the victim:

(i) at the time of the accident:

(A) was the driver or had the care and control of an automobile involved in the accident; and

(B) was under the influence of alcohol or drugs to such an extent that the victim was incapable for the time being of having proper control of the automobile;

(ii) was convicted, with respect to the accident, of an offence pursuant to one of the following provisions of the *Criminal Code*:

(A) section 220;

(B) section 221;

(C) section 236;

(D) clause 249(1)(a), subsection 249(3) or subsection 249(4); or

(E) subsection 252(1); or

(iii) was convicted, with respect to the accident, of an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in subclause (ii).

(2) For the purposes of subclause (1)(b)(i), a victim is conclusively deemed to be under the influence of alcohol or drugs to the extent that the victim was incapable for the time being of having proper control of an automobile involved in an accident if the victim is convicted, with respect to the accident, of an offence:

(a) pursuant to section 253, subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or

(b) pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in clause (a).

(3) The insurer shall determine whether a victim mentioned in subsection (1) was more than 50% responsible for the accident.

(4) A victim who disagrees with a determination of the insurer pursuant to subsection (3) may appeal the determination to the Court of Queen's Bench within 180 days after receiving written notice of the insurer's determination.

(5) For the purposes of this section, a certificate purporting to be signed by a judge of the convicting court or other officer having custody of the records of the convicting court certifying that a person has been convicted of an offence mentioned in subsection (1) or (2) is admissible in evidence as proof, in the absence of evidence to the contrary, of the conviction of that person without proof of the handwriting or position of the person purporting to have signed the certificate.

1994, c.34, s.18.

DIVISION 10
Indexation of Benefits

Interpretation of Division

187(1) In this Division, **"consumer price index"** means the consumer price index mentioned in subsections (2) to (4).

(2) Subject to subsections (3) and (4), in this Division, the consumer price index is the "all-items" Consumer Price Index for Saskatchewan as published monthly by Statistics Canada.

(3) Where no figure for the "all-items" Consumer Price Index for Saskatchewan is published by Statistics Canada for a month, the insurer shall determine a figure for that month in accordance with the regulations.

(4) Where, after the day this Part comes into force, Statistics Canada uses a new method to determine the "all-items" Consumer Price Index for Saskatchewan for a particular month and the new method results in a change of more than 1% when compared with the former method, the insurer shall determine a figure in accordance with the regulations.

1994, c.34, s.18.

Timing of required adjustments

188(1) On the anniversary of an accident, the insurer shall adjust the amount of the gross yearly employment income for the purposes of recalculating a victim's net income pursuant to section 132, 133 or 137.

(2) On each anniversary of the date on which an employment was determined pursuant to section 131, the insurer shall adjust that gross yearly employment income for that employment.

(3) On January 1 of each year, the insurer shall adjust any amounts set out in this Part, other than the maximum yearly insurable earnings set out in section 138.

(4) The amounts as adjusted pursuant to subsection (3) are applicable in calculating the amount of any benefit.

1994, c.34, s.18.

Calculation of adjustment

189(1) Subject to section 190, an amount to be adjusted pursuant to this division is to be adjusted in accordance with the following formula:

$$AM = A \times \frac{CPICY}{CPIPY}$$

where:

AM is the amount as adjusted;

A is the amount to be adjusted;

CPICY is the consumer price index for the year in which the adjustment is being made; and

CPIPY is the consumer price index for the previous year.

(2) For the purposes of this section, the consumer price index for a year is the average of the consumer price indices for each of the 12 months preceding October 1 of the previous year.

(3) If the average of the monthly consumer price indices for a year includes more than one decimal, only the first digit is to be retained, and it is to be increased by one unit if the second digit is greater than four.

(4) If the ratio between the consumer price index for the current year and the consumer price index for the previous year includes more than three decimals, only the first three digits are to be retained, and the third digit is to be increased by one unit if the fourth digit is greater than four.

(5) After adjusting pursuant to this section, the insurer shall round the resulting amount to the nearest dollar.

1994, c.34, s.18.

Cap on adjustments

190(1) Subject to subsection (2), where the ratio between the consumer price index for the current year and the consumer price index for the previous year exceeds 1.06:1, the ratio is deemed to be 1.06:1.

(2) When authorized by the regulations, the insurer may use the ratio calculated pursuant to section 189 even though the ratio between the consumer price index for the current year and the consumer price index for the previous year exceeds 1.06:1.

1994, c.34, s.18.

DIVISION 11

Insurer's Decisions and Appeals

Insurer's decisions final

191 Notwithstanding any other Act or law, any decision made or action taken by the insurer pursuant to this Part is final and conclusive and may be reviewed by a court only in accordance with this Division.

1994, c.34, s.18.

Insurer to give written reasons

192(1) The insurer shall give a claimant a written decision respecting the claimant's claim for a benefit.

(2) At the time the insurer sends a claimant a written decision, it shall give the claimant:

(a) written reasons for the decision; and

(b) written notice of the claimant's right to ask for a review and appeal of the insurer's decision pursuant to this Division.

1994, c.34, s.18.

Reconsideration before review or appeal

193(1) The insurer at any time may reconsider its decision with respect to a claim for a benefit if it is satisfied that new information is available respecting the claim.

(2) At any time before a claimant applies for a review of or appeals a decision, the insurer may reconsider the decision if:

(a) in the opinion of the insurer, a substantive or procedural error was made respecting the decision; or

(b) the decision contains a written error, an error in calculating or a clerical error.

1994, c.34, s.18.

Application for review

194(1) Within 60 days after receiving notice of a decision pursuant to this Part, a claimant may apply in writing to the insurer for a review of the decision.

(2) The insurer may waive the time limitation mentioned in subsection (1) if it is satisfied that the claimant has a reasonable excuse for not making the application within that time limitation.

1994, c.34, s.18.

Review

195(1) On a review of its decision, the insurer may set aside, confirm or vary its decision.

(2) The insurer shall provide a claimant who applied for a review with written reasons for its decision and a written notice of the claimant's right to appeal the insurer's decision pursuant to this Part.

1994, c.34, s.18.

Mediation

196(1) Within 30 days of receiving the insurer's decision pursuant to section 195, a claimant may notify the insurer in writing of the claimant's request to mediate the claimant's claim for benefits.

(2) A claimant who requests mediation shall pay the insurer a prescribed fee.

(3) In the claimant's request for mediation, the claimant shall state the issues respecting the claim that are to be the subject of the mediation.

(4) The claimant and the insurer shall agree on the appointment of a mediator within 15 days of the insurer receiving a written request for mediation.

(5) If the claimant and the insurer are unable to agree on a mediator within the period mentioned in subsection (4), either the claimant or the insurer may apply to the Court of Queen's Bench to appoint a mediator.

(6) A mediator appointed pursuant to this section shall endeavour to assist the parties to settle the issues that are the subject of the mediation.

(7) Subject to this section, a mediation pursuant to this section is to be conducted in accordance with the prescribed procedures.

(8) The insurer shall bear the costs of the mediation.

(9) Evidence arising from anything said, evidence of anything said or evidence of an admission or communication made in the course of mediation pursuant to this

section is not admissible in any appeal pursuant to this Part, except with the consent of the mediator, the claimant and the insurer.

1994, c.34, s.18.

Application for appeal

197 A claimant may appeal the insurer's decision on review to the Court of Queen's Bench:

(a) subject to clause (b), within 90 days after receiving the insurer's written reasons pursuant to section 195; or

(b) if a claimant has requested mediation pursuant to section 196, within 90 days of the termination of mediation.

1994, c.34, s.18.

Appeal

198(1) On an appeal, the Court of Queen's Bench shall adopt the insurer's findings of fact unless the claimant puts them in issue.

(2) If a claimant puts the insurer's findings of fact in issue, the Court of Queen's Bench may hold a hearing to determine the facts.

(3) On an appeal, the Court of Queen's Bench may:

(a) set aside, confirm or vary the insurer's decision; or

(b) make any decision that the insurer is authorized to make pursuant to this Part.

(4) If the Court of Queen's Bench determines that the insurer should have been paying the claimant benefits other than those which the insurer has been paying, the Court may award interest on the value of the benefits not paid, from the date when those benefits should have been paid until the date of the Court's decision.

(5) Subject to the regulations, the insurer shall reimburse a claimant who is successful on an appeal pursuant to this section or section 199 for the claimant's costs on a solicitor and client basis.

1994, c.34, s.18.

Appeal to the Court of Appeal

199(1) The insurer or the claimant may appeal a decision of the Court of Queen's Bench to the Court of Appeal only on a question of law or jurisdiction.

(2) An appeal pursuant to this section must be made within 30 days after the date

of the decision of the Court of Queen's Bench or within any further time that a judge of the Court of Appeal may allow.

1994, c.34, s.18.

Appeal does not stay decision

200 An application for review or appeal pursuant to this Division respecting a benefit does not stay or affect the validity of the insurer's decision respecting the payment of a benefit.

1994, c.34, s.18.

DIVISION 12
Recovery of Benefits

Overpayment

201(1) The following payments are overpayments pursuant to this Part:

(a) a benefit payment, other than a benefit payment pursuant to section 180 or a benefit payment mentioned in section 204, to which a person is not entitled;

(b) a benefit payment made to a person who prevents or obstructs the insurer from exercising any of its rights of subrogation pursuant to this Part.

(2) A person who has received an overpayment pursuant to this Part shall repay the amount of the overpayment to the insurer.

(3) An overpayment pursuant to this Part is a debt due to the insurer, and the insurer may recover an overpayment:

(a) by deducting the amount of the overpayment from any other payments that the insurer owes to that person; or

(b) by any other means allowed by law.

1994, c.34, s.18.

Time limits for recovery

202 The insurer may commence an action to recover an overpayment:

(a) within two years after the date that the amount of the overpayment was paid to a person;

(b) where the amount of the overpayment was paid as a result of fraud, within two years after the day the fraud is first known or discovered by the insurer;

(c) where the person to whom the benefits were paid has prevented or obstructed the insurer from exercising its rights of subrogation, within two years from the date that the insurer knows about or first discovers an act of that person relating to the prevention or obstruction.

1994, c.34, s.18.

Cancellation of overpayment

203 The insurer may cancel all or any part of an overpayment where the insurer considers that it is not recoverable.

1994, c.34, s.18.

Certain amounts not overpayments

204 The following amounts are not overpayments for the purposes of this Division:

(a) any benefits paid by the insurer before a decision of the Court of Queen's Bench or the Court of Appeal to cancel the benefit or reduce the amount of the benefit, unless the benefits were obtained by fraud;

(b) any benefits paid by the insurer before a decision of the insurer to cancel the benefit or reduce the amount of the benefit, unless the benefits were obtained by fraud.

1994, c.34, s.18.

DIVISION 13
Compensation pursuant to other Acts and Plans

Private insurance claims not affected

205 This Part does not limit or affect the rights of any person who claims or receives a benefit to claim compensation under a private insurance scheme.

1994, c.34, s.18.

Compensation pursuant to *The Workers' Compensation Act, 1979* or other Act

206(1) Notwithstanding any other provision of this Part, no benefits are payable to a person as a result of an accident if that person is entitled, with respect to that accident, to compensation pursuant to *The Workers' Compensation Act, 1979* or any other Act that relates to the compensation of persons who are victims of an industrial accident.

(2) Where a person is receiving a benefit and because of another bodily injury

becomes entitled to compensation pursuant to *The Workers' Compensation Act, 1979* or is receiving compensation pursuant to *The Workers' Compensation Act, 1979* and, because of another bodily injury, the person becomes entitled to a benefit:

(a) the insurer and the Workers' Compensation Board shall:

(i) make a joint decision distinguishing between the bodily injury attributable to the accident with respect to which a benefit is payable and the bodily injury for which a wage loss benefit is payable pursuant to *The Workers' Compensation Act, 1979*; and

(ii) pay compensation in proportion to the attribution of the person's bodily injuries; and

(b) the insurer or the Workers' Compensation Board, as the case may be, shall continue to pay the benefit or the compensation until the joint decision is made.

(3) The insurer may make an agreement with the Workers' Compensation Board respecting the procedure to be followed for handling claims by a person mentioned in subsection (2) and the Workers' Compensation Board has the power to make that agreement.

1994, c.34, s.18.

Disability payments to reduce income replacement benefit

207 If, as a result of an accident, a victim is entitled to an income replacement benefit and a disability benefit pursuant to the Canada Pension Plan or any similar program in a jurisdiction outside Saskatchewan, the insurer shall reduce the income replacement benefit by the amount of the disability benefit payable to the victim.

1994, c.34, s.18.

Subrogation for compensation pursuant to other Acts

208 Subject to section 103, if a person receives compensation pursuant to *The Workers' Compensation Act, 1979*, *The Saskatchewan Hospitalization Act* or *The Saskatchewan Medical Care Insurance Act* respecting a bodily injury caused by an automobile, the body authorizing the compensation pursuant to that Act:

(a) is subrogated to the person's rights; and

(b) has the same remedies as the insurer to recover the compensation from any person who is not resident in Saskatchewan and is responsible for the accident, or who is liable to pay compensation for bodily injury caused by the non-resident.

1994, c.34, s.18.

DIVISION 14
General

Substantial compliance with forms and notices

209 Substantial compliance with requirements respecting the content of forms, notices or other documents is sufficient unless the insurer is of the opinion that it would result in unfairness to any person.

1994, c.34, s.18.

Ex gratia payments

210 Where the insurer considers that the payment of a person's claim is in the interest of the insurer and the better administration of this Part, the insurer may authorize an ex gratia payment to be made to that person.

1994, c.34, s.18.

Immunity

211 No action lies or shall be instituted against the insurer or any director, officer, employee or agent of the insurer, where that person is acting pursuant to the authority of this Part or the regulations, for any loss or damage suffered by any person by reason of anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done, by any one or more of them pursuant to or in the exercise or supposed exercise of any power conferred by this Part or the regulations or in the carrying out or supposed carrying out of any duty imposed by this Part or the regulations.

1994, c.34, s.18.

Non-compellability

212(1) A director, officer, employee or agent of the insurer is not compellable to give evidence or to produce any documents or other things in a court or in a proceeding of a judicial nature concerning any information that comes to the knowledge of that director, officer, employee or agent in the exercise of the powers, performance of the duties or carrying out of the functions of the insurer pursuant to this Part.

(2) This section does not apply to an appeal made pursuant to Division 11.

1994, c.34, s.18.

Agreements

213 The insurer may enter into agreements with any department or agency of the Government of Saskatchewan, any government in Canada or the United States of

America or any agency of that government, or any other person respecting any matter or thing that the insurer considers necessary or appropriate to advance the purposes of this Part.

1994, c.34, s.18.

Offence and penalty

214 Every person who contravenes any provision of this Part or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than $1,000.

1994, c.34, s.18.

Computation of interest rates

215 Where interest is payable pursuant to this Part or the regulations, the interest is to be computed in accordance with the regulations.

1994, c.34, s.18.

Service

216 Where a claim, notice or other document is required to be given or served pursuant to this Part or the regulations, the claim, notice or document is to be given or served in the prescribed manner.

1994, c.34, s.18.

Regulations

217(1) The Lieutenant Governor in Council may make regulations:

(a) defining, enlarging or restricting the meaning of any word or phrase used in this Part but not defined in this Part;

(b) respecting the form and content of applications made pursuant to this Part;

(c) prescribing educational institutions or classes of educational institutions for the purposes of this Part;

(d) prescribing the manner in which the insurer may determine the industrial average wage or the consumer price index;

(e) respecting structured compensation orders pursuant to section 103;

(f) respecting rehabilitation benefits payable pursuant to Division 3;

(g) prescribing other benefits that the insurer shall consider when calculating an income replacement benefit;

(h) respecting the procedure applicable to, and the proof required for, claims for compensation;

(i) respecting the circumstances in which an employment is considered to be full-time employment or part-time or temporary employment;

(j) respecting gross yearly employment incomes, including determining gross yearly employment incomes for workers in the employ of another and self-employed workers, establishing classes of employment, and determining the amount of gross yearly employment incomes on a weekly or yearly basis;

(k) respecting gross yearly employment incomes for the purpose of section 112, 113, 114, 115, 116, 120 or 125;

(l) respecting standards and procedures for determining an employment for victims pursuant to sections 131 and 134, including establishing classes of employment, determining gross yearly employment incomes on a yearly or weekly basis for each class of employment based on work experience, and establishing the manner of reducing the gross incomes for victims holding part-time employment;

(m) respecting the calculating of the net income of a victim, including the amount of the income tax, premium and contribution mentioned in section 137;

(n) prescribing the terms governing the payment of a replacement worker benefit pursuant to section 141;

(o) respecting the manner of capitalization pursuant to subsection 146(4) or 148(3);

(p) respecting the payment of education benefits pursuant to section 152;

(q) respecting the establishment of a schedule of permanent impairments;

(r) for Divisions 3 and 7, respecting the reimbursement of expenses, including the expenses that are eligible for reimbursement, the terms and conditions under which the insurer may reimburse expenses and the maximum amounts that may be reimbursed, and respecting the circumstances in which the insurer may replace reimbursement of expenses pursuant to section 158 with the payment of a periodic allowance;

(s) respecting the adjustment or termination of benefits pursuant to section 159 and expenses reimbursed pursuant to section 163, including the circumstances in which the benefits may be adjusted or terminated and the amounts of adjusted benefits;

(t) respecting benefits payable pursuant to section 164;

(u) respecting examinations pursuant to Division 8, including the content of reports based on examinations;

(v) respecting allowances and the reimbursement of expenses mentioned in section 171, including the circumstances in which the allowances may be paid and the expenses may be reimbursed;

(w) respecting the reimbursement of the cost of reports pursuant to section 174, including the maximum amount that may be reimbursed;

(x) for the purposes of section 190, authorizing the use of ratios calculated pursuant to section 189;

(y) respecting mediation pursuant to section 196, including prescribing procedures pursuant to which mediation shall be conducted;

(z) prescribing fees payable by a claimant who requests mediation pursuant to section 196;

(aa) respecting the transmission of facsimiles of documents by telephone to and from the insurer;

(bb) respecting the manner in which a person's debt to the insurer may be deducted from compensation payable to the person by the insurer;

(cc) respecting the computation of interest pursuant to this Part;

(dd) respecting the manner in which a claim, notice or other document is to be served or given;

(ee) prescribing any other matter or thing that this Part requires to be prescribed in the regulations;

(ff) respecting any other matter that the Lieutenant Governor in Council considers conducive to attain the purposes of this Part.

(2) The regulations made pursuant to clause (1)(q) may adopt by reference any specifications, standards or codes recognized by the insurer, either as of a fixed date, or as amended from time to time.

(3) A regulation made pursuant to clause (1)(g) may be made retroactive to a day not earlier than the day that this Part came into force.

1994, c.34, s.18.

Part to prevail

218 This Part and the regulations prevail if there is any conflict or inconsistency between:

(a) this Part and the regulations; and

(b) any other Act or regulations.

1994, c.34, s.18.

Rights on subrogation

219 Where the insurer or another body is given a right of subrogation pursuant to this Part by reason of paying or becoming liable to pay a benefit or compensation, the insurer or other body is deemed to be an assignee and is subrogated to all rights of recovery of the person to whom or with respect to whom or for whose benefit the benefit or compensation was paid or is payable and may:

(a) bring an action in its or his or her own name to recover the amount of the benefit or compensation paid or payable; or

(b) join with the person to whom or with respect to whom or for whose benefit the benefit or compensation was paid or is payable to bring an action in the name of that person for the recovery of damages resulting from the injury or death of a victim.

1994, c.34, s.18.

Review committee

220(1) The Lieutenant Governor in Council shall appoint a review committee, consisting of at least five members.

(2) The first review committee is to be appointed within five years of the day that this Part comes into force.

(3) Review committees appointed after the first review committee are to be appointed within five years from the date that the Lieutenant Governor in Council received the report of the previous review committee.

(4) The Lieutenant Governor in Council shall:

(a) appoint the members of the review committee and shall designate one of those members to be chairperson of the committee and another member to be acting chairperson; and

(b) specify the number of members that constitutes a quorum.

(5) The review committee shall review and report to the Lieutenant Governor in Council on all matters concerning this Part, the regulations made pursuant to this Part and the administration of this Part and the regulations made pursuant to this Part.

(6) The minister shall provide any technical, clerical and other assistance that the review committee may require.

(7) The chairperson of the review committee, or in the chairperson's absence the acting chairperson, has the powers of a commissioner pursuant to The Public Inquiries Act and the review committee may receive and accept any evidence and information under oath or by affidavit or otherwise that it may consider proper.

1994, c.34, s.18.

Editorial Appendix

Subsection 5(2) of *The Automobile Accident Insurance Amendment Act, 1988* states:

> "The repeal of section 63, as it existed on the day before the coming into force of this Act, applies to all actions or proceedings:
>
> (a) commenced but not determined before the coming into force of this Act; or
>
> (b) commenced on or after the coming into force of this Act".

Appendix B

An Evaluation of Rehabilitation Case Management in the Personal Injury Protection Plan – William M. Mercer Ltd.

An Evaluation of Rehabilitation Case Management in the Personal Injury Protection Plan

October 25, 2000

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Section I – Executive Summary

William M. Mercer Limited was asked by the Personal Injury Protection Plan (PIPP) Review Committee to evaluate how SGI has fulfilled its mandate for rehabilitation case management. The Committee requested that Mercer compare SGI's rehabilitation case management practices to the group disability insurance industry. Generally speaking, we found that the Personal Injury Representatives (PIR) at Saskatchewan Government Insurance are doing an excellent job of case managing rehabilitation for injured claimants.

Our overall findings are:

- SGI is providing excellent customer service in PIPP.
- SGI staff display strong interpersonal and communication skills, and a good sense of timeliness in handling claims.
- Although documentation of actions/decisions is inadequate, documentation of communication and interaction with claimants and health care providers is excellent.
- There appear to be few forms or tools available to SGI staff to permit a structured documentation, decision and case management process.
- Little or no adjudication is occurring. There appears to be no use of the "definition of disability" in the system, something that is especially important for Income Replacement Benefit (IRB) determinations of entitlement.
- Although the media contends that there is a school of thought which believes that SGI's non-clinician staff should not be making clinical decisions, there is a role for them to play in ensuring that claimants receive the care that will allow their recovery to progress swiftly.
- SGI is often excluded by the health care community from the medical rehabilitation planning process, through late submission of claims or reports, or through provision of incomplete reports. With the exception of certain modalities that are restricted, it is uncommon for health care providers to request approval of, or even provide notification of, rehabilitation/treatment plans.
- SGI's case management practices compare more than favourably with those of the group disability insurance industry. With the exception of adjudication, SGI is philosophically and practically far in advance of group disability insurers. SGI's approach is outcomes-oriented, while group insurers are currently still focused on processes and paperwork.

- SGI's staff are providing good case management services, against considerable odds. More structure to the process would provide an ability to improve this already superior approach.

Recommendations

Mercer suggests that SGI should undertake several changes to its rehabilitation case management operation based upon the findings in this report. These recommendations are provided by Mercer to address the larger issues noted in the report. They do not attempt to deal with all of the areas where we found room for improvement. The PIPP Review Committee may wish to make those recommendations.

Recommendation #1

SGI should revisit the definition of disability contained in the Automobile Accident Insurance Act and its regulations and provide PIR's with guidelines for adjudicating to it

Recommendation #2

Document adjudication processes and decisions more thoroughly.

Recommendation #3

SGI should itself review compliance with the timelines for referral to secondary and tertiary assessment

Recommendation #4

SGI should develop a method for demonstrating and documenting why the recommended timelines for referral to secondary and tertiary assessment have been extended.

Section II – Introduction

SGI's Conversion to No Fault

On January 1, 1995 auto insurance in Saskatchewan changed from the tort system to the no-fault system. The change required that SGI make a significant change in its management of injuries and in the skills, abilities, and knowledge of its staff.

The tort system required that adjusters negotiate with injured claimants and their lawyers to limit financial settlements. The no-fault system requires these same staff, now called "Personal Injury Representatives" (PIR), to become rehabilitation case managers who open the doors to various rehabilitative services, arrange speedy returns to work and, ultimately, make the claimant feel that he/she has been well served.

In addition to changing its mode of operations, SGI funded the establishment of two tertiary assessment treatment centres in Regina and Saskatoon. It also established criteria and standards for the services to be provided by secondary assessment and treatment centres throughout the province.

Objectives and Strategy for the File Review

William M. Mercer Limited was retained by the Personal Injury Protection Plan (PIPP) Review Committee to evaluate how SGI has fulfilled its mandate for rehabilitation case management.

More specifically, Mercer has been asked to review:

- Adjudication
- Injury Management
- Identification of Rehabilitation Candidates
- Authorization of Rehabilitation Services
- Coordination of Rehabilitation Services
- Monitoring of Rehabilitation Services
- Use of Vocational Rehabilitation
- Ongoing Rehabilitation Case Management Training of PIR's
- Success of the Conversion from Tort to the Rehabilitation Case Management Model.

Once we began reviewing files, we also decided to comment on SGI's customer service as it applies to rehabilitation case management. The reason for this addition was that we immediately found a unique and superior customer service orientation which is unusual when compared to group disability insurers.

Information gathering for this evaluation consisted of a review of injury files. Two Mercer consultants reviewed 101 injury files to assess the case management elements. These files were randomly selected from the categories mentioned below. The PIPP Review Committee requested that Mercer assess a higher proportion of "younger" files (dates of loss less than 12 months ago) to assess recent practices. However, some of files were "older" (date of loss more than 36 months ago) to identify any differences between early and more recent PIPP rehabilitation case management. The Income Replacement Benefit (IRB) is what SGI pays to claimants who cannot return to their jobs due to injury and includes the provision of a replacement worker for self-employed claimants. Mercer and the PIPP Review Committee felt that it was important to review both IRB and Non-IRB (i.e., non-employed people such as students, retired people, homemakers, etc.) cases as this would provide a better view of the scope of rehabilitation case management. The distribution of the files is as follows:

	IRB	**%**	**Non-IRB**	**%**	**Total**	**%**
Younger	20	39%	37	74%	57	56%
Older	14	27%	4	8%	18	18%
Other*	14	28%	9	18%	23	23%
Catastrophic	3	6%	0	0%	3	3%
Total	*51*	*100%*	*50*	*100%*	*101*	*100%*

** Includes those with date of loss between 12 months and 36 months ago*

Rural	**IRB**	**%**	**Non-IRB**	**%**	**Total**	**%**
Employed	7	14%	3	6%	10	10%
Farmer	6	12%	2	4%	8	8%
Self-employed not farmer	4	8%	5	10%	9	9%
Surveillance Utilized	3	6%	1	2%	4	4%
Non-employed	0	0%	3	6%	3	3%
Urban						
Employed	17	33%	17	33%	34	34%
Farmer	0	0%	4	8%	4	4%
Self-employed not farmer	5	10%	7	14%	12	12%
Surveillance Utilized	4	8%	1	2%	5	5%
Non-employed	1	1%	4	8%	5	5%
North						
Employed	3	6%	0	0%	3	3%
Farmer	0	0%	0	0%	0	0%
Self-employed not farmer	0	0%	1	1%	1	1%
Surveillance Utilized	1	2%	1	2%	2	2%
Non-employed	0	0%	1	2%	1	1%
Total	*51*	*100%*	*50*	*100%*	*101*	*101%*
** Rounding results in 101% instead of 100%*						

Case Management

Definition

SGI does not appear to have a working definition of this term. In the Administration Manual[1], the section on case management includes discussion of elements that are for the most part primarily related to adjudication of eligibility and entitlement. Given the absence of a working definition, Mercer and the PIPP Review Committee decided to use Mercer's definition which is:

> Case Management is the identification, authorization, monitoring, and coordination of benefit payments, goods and services to a disabled person to ensure an early return to work (RTW) and/or the maximum medical improvement.

For more details of the case management model used in our evaluation, please refer to the appendix.

Medical Rehabilitation vs. Vocational Rehabilitation

Rehabilitation is divided into medical and vocational areas. This separation is made for case management purposes so that the treating practitioner (often referred to as the "primary practitioner", and who, for SGI claimants, may be a physician, chiropractor, or physiotherapist) may manage one while the case manager (PIR) manages the other.

Medical Rehabilitation consists of the treatments, therapies, and medications which are provided to an injured claimant to return him or her to as close to pre-injury medical status as possible. In Saskatchewan, these may be provided by a chiropractor, physiotherapist, or medical doctor. The treating practitioner has control over development and delivery of the medical rehabilitation plan. The PIR is in the position of influencing these treatments.

Vocational Rehabilitation is the re-establishment in a previous or establishment in a new occupation. In the case of non-earners (i.e., students, homemakers, retired or unemployed people) it means a return to pre-accident activities to the extent possible. In vocational rehabilitation the PIR controls the development and delivery of the rehabilitation plan.

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[1] *Entitled "PIPP Personal Injury Protection Plan". The section on Case Management begins on page 108.*

Section III - Findings

Customer Service

The customer service provided by SGI is excellent. The PIR's demonstrate concern with all aspects of a claimant's situation. They are very accessible by telephone and often develop friendly relationships with claimants. Even though written communication is standardized in content, it is personalized in greeting and overall tone. In general, we considered the extent and tone of communication, as well as the accessibility and service orientation of the PIR's, to be considerably superior to that commonly found in the group disability insurance industry.

Enquiries are handled quickly, requests for approval of treatment are responded to within a day or two at most, and the file notes overall demonstrated an appreciation for the need to keep time frames tight.

Case Management Approach

The SGI case management system also has other strengths.

- PIR's keep excellent file notes. These online notes are typically written in a neutral tone and are computerized, while the files are paper. Virtually all contacts with claimants and providers are documented, as well as internal consultations. In almost all claims reviewed, these on-line notes were more than sufficient to give the Mercer team a clear idea of what was happening in the claim. It was clear to us that the paper files were of less importance than the computer notes, and that any PIR could review the computer notes and provide responsive service to a claimant with whom they were unfamiliar. We are not aware of any group disability insurer who can provide a similar level of access.
- SGI's information system is superior. The file review criteria established by the PIPP Review Committee would have been daunting, if not impossible, for a typical Canadian group disability insurer. SGI was able to produce the required reports easily. SGI was also able to produce claim files, even from remote offices, within 24 hours; this is again something that is a challenge for most group disability insurers.
- The PIPP Review Committee asked us to review whether PIR's explained the options and their implications adequately to those self-employed claimants who had a choice between an IRB or a replacement worker. In most cases this occurred, but appeared not to have been done in one third of the files.

Options Explained	# of Files	%
Yes	10	53%
No	6	32%
Unclear	3	16%

Adjudication

Adjudication is the decision-making element of case management. The adjudication function requires the PIR to make decisions about services and benefits claimed by claimants and their health care and vocational rehabilitation providers. Both the claimant's eligibility for the service/benefit, and entitlement to the service/benefit need to be addressed.

The usual sequence for adjudication is:	In the context of the PIPP, this would translate to:
▪ Determine eligibility.	▪ Determine whether the claimant and/or the accident is covered by the scheme.
▪ Adjudicate threshold entitlement.	▪ Determine whether the injuries claimed are related to the accident.
▪ Determine indemnity or other entitlement.	▪ Determine what services and benefits the claimant can receive under the scheme.

Eligibility

Our experience with disability insurers and workers' compensation authorities shows that these organisations typically do not manage claims until the issues of eligibility and threshold entitlement have been adjudicated. There is an underlying acknowledgement that their liability and authority do not exist until it has been determined that the claimant is eligible to make a claim. The PIPP files were remarkable for the extent to which entitlement decisions were demanded of PIR's (by claimants and health providers) before eligibility and other threshold issues could be determined.

In only one case reviewed was there specific enquiry into the issue of whether or not the claimant had coverage under the Plan. This appeared to have been triggered by the fact that the claimant's residence and place of accident were both out of Saskatchewan. There were no file references to issues of coverage in the other claims reviewed.

It is quite possible that this type of enquiry is completed but not documented in the file or the electronic notes, or that it is completed as part of the auto claim, but we were unable to determine this from a review of the files.

Threshold

The issues that are related to the threshold are:

- Accident-injury link
- Injury-disability link
- Injury must be compensable[2]

Examples of something that would require enquiry in this area would be:

- Delay in onset of symptoms
- Diagnosis or other evidence of a condition that is not usually accidental in cause (e.g. osteoarthritis)
- Pre-existing conditions
- Subsequent conditions
- Potential WCB entitlement

We saw no evidence in the files of enquiry into these types of situations. Again, it is possible that this type of investigation is not documented. There were several files in which, as part of a more global review into a specific entitlement being claimed, questions were asked about the accident-injury or injury-disability links, but there was no sense of urgency to the enquiry that was made. In one case, well over a year had passed without any resolution of the question, and enquiry was not being actively pursued at the time of our review.

It is our impression that PIR's do not have an understanding of what factors might make a claimant eligible for WCB entitlement. Where the accident happens while the claimant is in the course of his/her employment, it is possible that the WCB should be the agency responsible. This could mean that SGI is paying claims that ought to be handled by the WCB. We saw no evidence of coordination with the WCB in any file.

Indemnity

This element of adjudication relates to decision-making on the types of benefits, services, reimbursements, etc. that are being claimed. In this area, we found that the PIR's showed very good skills. As has been noted elsewhere, the customer service, interpersonal skills, and accessibility of the PIR's are excellent.

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[2] *see pages 19-23 of the PIPP Administration Manual.*

The majority of time spent on claim and case management is spent dealing with requests for benefit/service approval from claimants and health care providers. In the great majority of cases, health care service approval requests in particular are received very early in the life of the claim and must be handled expeditiously. There appears to be a general belief in the population that "no fault" means "automatic entitlement". Both claimants and providers on occasion expressed displeasure that a PIR would authorise treatment conditional on the claim being accepted.

The PIR's themselves seem to subscribe to this no fault = entitlement belief, and little attention is paid to the first two steps in adjudication[3]. There seems, in fact, to be more focus on ensuring appropriate paperwork is provided by the claimant ("proof of claim") than on ensuring the compensability of the claimed injury/disability. Indemnity is almost automatic for health care services. Similarly, delays in payment of IRB are most commonly related to obtaining information to permit calculation than to enquiry into whether the work/school absence is accident-related or medically required. The definitions of, and relationship between "impairment" and "disability" should be revisited in PIR training.

- An "**impairment**" is a loss of function which, in the SGI context, is caused by an injury.
- A "**disability**" is caused by an impairment which prevents a person from engaging in his/her normal occupation.

Consequently, any impairment must be compared to an occupation to determine if it is a disability. A sprained ankle is an impairment which may not be disabling for a secretary who sits all day but is very likely to be disabling for a construction labourer who is walking and climbing for long periods.

To put it another way, the existence of a diagnosis is taken to be evidence of a need for treatment, and evidence of a disability **instead** of merely evidence of impairment.

- No files reviewed showed any evidence that a definition of disability exists, let alone that the findings in the file were adjudicated against that definition. However, the Automobile Accident Insurance Act does contain a definition of disability which states that a person is disabled if:

> "...the bodily injuries render the insured entirely incapable of engaging for wages or profit in any occupation or employment for which the insured is suited having regard to his skill and ability..."[4]

We found that PIR's did not question whether or not an injury did, in fact, constitute a disability. This is at considerable and significant variance to the approach taken by group disability. This is not to say that it is at variance with the mandate which has been given to SGI, which cannot be determined from the files.

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[3] *i.e., determine eligibility and adjudicate threshold entitlement, see page 8.*

[4] *Section 24, Weekly Indemnity for Bodily Injuries. There is also a similar definition in The Personal Injury Benefits Regulations, Section 18 "Meaning of Unable to Hold Employment".*

- SGI has developed a *Physical Job Analysis Sheet*. This form is to be completed by the employee's immediate supervisor, and describes the specific functions of the employee's job. Most group disability insurers use this type of tool to assist in adjudicating the extent of disability for income replacement purposes. In the 50 files reviewed in which IRB was paid, we found only 9 of these forms and no evidence that they were used in any way.

- We also saw no evidence in the files that the PIR's at any time questioned a claimant's *need* for treatment – whether any treatment at all or any specific therapy. Decisions on requests for treatment entitlement were dealt with in an entirely different context, that of treatment guidelines related to frequency, nature of practitioner, etc.

Injury Management

SGI provides some evidence-based guidance to the PIR's on the medical management of whiplash associated disorder (WAD) and low back pain (LBP) injuries. These two types of injury are reported to account for the majority of the Income Replacement Benefits (IRB) paid to claimants as well as the days lost from work and other pre-accident activities. The direction provided to the PIR's originates with SGI's decision, before the no-fault conversion in 1995, to adopt the findings of the Québec Task Force Report[5] as well as the findings on back injuries[6]. These scientific reports demonstrated that some of the previous thinking on the management of both types of soft tissue injury was not based upon evidence, while other medical practices were possibly harmful. SGI documented its guidance to PIR's in:

- Chart of Approved Interventions
- The Uniform Guidelines for Medical Assessment/Second Opinion/Re-Assessment[7].

Although there is considerable discussion of "early intervention" and similar issues in the group insurance community, insurers rarely take a role in providing or managing the medical rehabilitation of disability claimants. SGI is superior to group disability insurers in this respect.

The Chart of Approved Interventions

PIR's are directed to only authorize payments for treatments proven effective. They are not to authorize payments for treatments proven ineffective or contraindicated. In the middle ground, treatments not proven effective, the PIR's have been given some discretion The Chart of Approved Interventions may be found in the appendix.

[5] *Scientific Monograph of the Québec Task Force on Whiplash Associated Disorders:..., Spitzer et al., Spine, Volume 20, Number 85, 1995.*
[6] *Acute Low Back Problems in Adults, Bigos et al, Clinical Practice Guideline Number 14, Agency for Health Care Policy and Research, No. 950642, December 1994*
[7] *These appear in the Personal Injury Protection Plan Early Intervention Program Guidelines.*

The PIR's are following the Chart of Approved Interventions. In 87.5% of cases where the guidelines clearly applied, they were followed. In only eight of the files reviewed did the PIR appear to have not followed the guideline.

"Did PIR follow Chart of Approved Interventions?"

Total # cases where Chart of Approval clearly applied	–	64
Total # cases where Chart of Approval was followed	–	56 (87.5%)
Total # cases where Chart of Approval was not followed	–	8 (12.5%)

The Uniform Guidelines for Medical Assessment/Second Opinion/Re-Assessment

This document is intended to ensure that claimants with soft tissue injuries are returned to work or pre-accident status as soon as possible. Traditional medical practices had the claimant often avoiding usual activities for many months while undergoing treatment. In many cases, recovery was delayed or did not occur.

The majority of claimants in the files reviewed continued with many, if not most or all, of their usual activities – especially employment – while medical rehabilitation was ongoing. Note that 50% of the randomly selected files incurred no IRB expense; and in the 50% in which there was an IRB expense, most absences seemed typically very brief and the IRB expenditure small.

Using *the Québec Task Force Report* and *Acute Low Back Problems Guideline* as a basis for new treatment modalities, SGI established secondary and tertiary assessment/treatment centres.

Secondary centres were established in many locations in Saskatchewan. Their purpose is to provide assessment and treatment through the collective expertise of a physician, physiotherapist and chiropractor. Claimants are to be referred to secondary assessment centres when the 6–8 week primary treatment plan developed by the claimant's treating practitioner of choice has not produced significant improvement.

Two tertiary centres were established by SGI in Regina and Saskatoon to draw on the expertise of an even greater number of health professionals. Tertiary centres combine the skills and expertise of physicians, chiropractors, physiotherapists, psychologists, exercise therapists, nutritionists, and others as part of the health care team. Claimants are to be referred to tertiary assessment after 12-14 weeks of secondary treatment when no significant improvement has been achieved.

The PIR's followed the Uniform Guidelines in over 60% of the cases reviewed in which the guidelines were applicable.

"Did PIR follow Uniform Guidelines?"

Total # cases where Uniform Guidelines clearly applied	– 64
Total # cases where Uniform Guidelines were followed	– 40 (62.5%)
Total # cases where Uniform Guidelines were not followed	– 24 (37.5%)

For the 24 cases, where the date of referral to secondary assessment was found, the average elapsed time from date of loss to date of referral was 17 weeks. This figure further breaks down to an average of 16 weeks for IRB cases and 19 weeks for no-IRB cases. This is well beyond the six to eight weeks suggested in the Uniform Guidelines.

For the 20 cases, where the date of referral to tertiary assessment was found, the average elapsed time from date of loss to date of referral was 47 weeks. When we further divide this figure we find an average of 34 weeks for IRB cases and 89 weeks for no-IRB cases.

It is our understanding that the timelines in the Uniform Guidelines (specifically, referral to secondary and tertiary assessment) apply to cases where the claimant is **not** making "significant improvement". It is important to recognize that the evaluation of whether or not a treatment plan is achieving "significant improvement" is a matter of judgement. Our judgement may differ from that of the PIR's (or treating professionals) handling the cases due to hindsight, or because they had knowledge that is not documented in the files or file notes.

Specific Case Management Functions

As described in the appendix, case management is a matrix of phases and functions, which are divided into medical and vocational areas of rehabilitation.

We were advised that the PIR's are considered by SGI to function as case managers. This section looks at how they carry out their functions, within the framework of the phases and functions of case management.

Identification of Rehabilitation Candidates

The PIR's are charged with the responsibility of identifying claimants who are not improving in primary care, and later, in secondary care. Treating practitioners will also identify this need in many cases, or draw it to the attention of the PIR – and are encouraged to do so. In over half the cases in which a secondary referral may have been advisable, the PIR identified that need, rather than the primary practitioner. The need for secondary assessment was identified in 43 cases with the following results:

# cases where a need for secondary referral was noted	–	43
# cases where PIR identified need	–	23 (53%)
# cases where PIR did not identify need	–	20 (47%)

The PIR's also have the responsibility to refer claimants on to tertiary assessment in accordance with the guidelines, and again the treating practitioner is encouraged to do this as well. However, PIR's are playing a lesser role in the case management identification function for tertiary assessment than they are in secondary assessment.

# cases where a need for tertiary assessment was noted	–	22
# cases where PIR identified need	–	9 (41%)
# cases where PIR did not identify need	–	13 (59%)

Given the complexities of a claimant's medical situation at this stage of a disability, and given the life disruption that may occur with participation in tertiary programs, it is understandable that the PIR's may be reluctant to refer these cases and that they may be waiting for the health care providers to do so. However, no explanations are included in the files for the failure to comply with the referral guidelines, and the cost implications - to the claimant in quality of life and to the PIPP in dollars - of a failure to comply are significant.

Authorization

The PIR's are expected to provide some guidance to secondary and tertiary assessment centres when making a referral, or when requesting that the treating practitioner make the referral. This guidance may take any number of forms such as:

- Informing the assessment centres that the symptoms and level of disability may not be congruent.
- Noting that the claimant may have been "doctor shopping".
- Informing the centre that the treating practitioner refused to discuss the claimant's situation with the PIR.

- Observing that the claimant likes his job and may have a good support system at work for an early return.

In either scenario, the PIR sends a *Personal Injury Representative Assessment Referral Form* along with other information on file. Mercer's review evaluated whether the PIR's were providing any specific guidance or direction to assessment centres, as opposed to just forwarding copies of reports and forms. The following table outlines our findings in this area:

Guidance in the referral to assessment centres was not the rule. Guidance was not provided in 64% of cases where referrals occurred.

Did the PIR provide guidance/direction to assessment centres?

	IRB	**%**	**Non-IRB**	**%**	**Total**	**%**
Yes	9	23%	5	13%	14	36%
No	13	33%	12	31%	25	64%
Total:					*39*	*100%*

In the case of vocational rehabilitation, guidance in the referral process is also important. Some referrals contained this guidance but more often they did not.

"Did the PIR provide guidance/direction to vocational rehabilitation providers?"

	IRB	**%**	**Non-IRB**	**%**	**Total**	**%**
Yes	7	37%	1	53%	8	42%
No	11	57%	0	0%	11	58%
Total:					*19*	*100%**

The group disability insurance industry does not operate using the medical management approach demonstrated by SGI. The industry does not consider direct involvement in medical rehabilitation to be part of its mandate. Referrals that are made in group disability insurance cases are typically made for adjudication purposes, although independent medical examinations are also arranged in the hope that the treating physician will follow any resulting treatment recommendations. With regard to vocational rehabilitation, group disability insurers generally do not provide the types of services that SGI claimants receive, unless the specific claimant is seen to be highly employable.

In most insurance systems, an adjudicator or case manager must approve payments for goods and services. In medical rehabilitation this includes any treatments or therapies which SGI pays for. However, PIR's typically learn about physiotherapy, massage, and chiropractic treatments after the fact. This can lead to difficulties if a PIR feels that a course of treatment is not beneficial. It is virtually impossible for a PIR to refuse to pay for treatment which has already occurred. We saw this type of refusal only in files in which the claimant had failed to pursue the claim.

The Mercer team found the following pattern when answering the question:

"Did the PIR authorize all medical treatments...?":

	IRB	**%**	**Non-IRB**	**%**	**Total**	**%**
Yes	15	29%	22	44%	37	37%
No	18	35%	5	10%	23	23%
Unclear	9	18%	7	14%	16	16%
N/A	8	16%	15	30%	23	23%
No data	1	2%	1	2%	2	2%
Total:	*51*	*100%*	*50*	*100%*	*101*	*101%**
** Rounding*						

SGI is often excluded by the health care community from the medical rehabilitation planning process, through late submission of claims or reports, or through provision of incomplete reports. With the exception of certain modalities that are restricted, it was uncommon in the files reviewed for health care providers to request approval of, or even provide notification of, rehabilitation/treatment plans.

In vocational rehabilitation, the PIR seemed to take a more proactive role in the authorization function.

"Did PIR authorize ....implementation of IWRP?"[8]:

	IRB	%	Non-IRB	%	Total	%
Yes	7	14%	0	0%	7	7%
No	4	8%	0	0%	4	4%
Unclear	2	4%	1	2%	3	3%
N/A	37	73%	49	98%	86	85%
No data	1	2%	0	0%	1	1%
Total:	*51*	*101%*	*50*	*100%*	*101*	*100%*
	** Rounding*					

Monitoring

The PIR's, as part of their file management, obtained medical treatment, vocational plans, and progress reports. However, we were not able to determine from the file review whether the PIR's were evaluating service providers' performance, which is an important part of the case management monitoring function.

For medical rehabilitation, the PIR's usually received a treatment plan. Often this plan was detailed in the initial Practitioner's Report. However, some Practitioner's Reports were not as clear as others. This resulted in the Mercer team's assessment that the information provided did not constitute a medical treatment plan. Consequently, we judged that no treatment plan was present in approximately one-third of the cases. This appears to be a rather high frequency of files which do not appear to have any medical treatment plan.

"Did PIR obtain a medical treatment plan...?"

	IRB	%	Non-IRB	%	Total	%
Yes	35	69%	27	54%	62	61%
No	14	27%	10	20%	24	24%
Unclear	0	0%	1	2%	1	1%
N/A	2	4%	11	22%	13	13%
No data	0	0%	1	2%	1	1%
Total:	*51*	*100%*	*50*	*100%*	*101*	*100%*

In vocational rehabilitation, the PIR's received plans only about 50% of the time.

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[8] *Individual Written Rehabilitation Plan.*

"Did PIR obtain.... IWRP?"

	IRB	**%**	**Non-IRB**	**%**	**Total**	**%**
Yes	9	18%	0	0%	9	9%
No	7	14%	0	0%	8	8%
Unclear	0	0%	0	0%	0	0%
N/A	35	69%	49	98%	83	82%
No data	0	0%	1	2%	1	1%
Total:	*51*	*101%**	*50*	*100%*	*101*	*100%*
	** Rounding*					

In medical rehabilitation, progress reporting occurred about 76% of the time. However, it is not always possible to determine from the files whether this is because treatment was completed, or abandoned by the claimant, or because the PIR failed to follow up for the information. Given the higher frequency of vocational rehabilitation reporting (see below), we would suggest that SGI pay more attention to medical progress reporting so that this percentage might more approximate the vocational rehabilitation percentage below.

"Did PIR obtain medical .... progress reports?"

	IRB	**%**	**Non-IRB**	**%**	**Total**	**%**
Yes	36	44%	26	32%	62	76%
No	11	13%	9	11%	20	24%
Total:					*82*	*100%*

On the other hand, vocational rehabilitation almost always (94% of the time) saw the PIR receiving progress reports.

"Did PIR obtain.... vocational rehabilitation progress reports?"

	IRB	**%**	**Non-IRB**	**%**	**Total**	**%**
Yes	15	88%	1	6%	16	94%
No	1	6%	0	0%	1	6%
Total:					*17*	*100%*

Overall, we found that SGI was much better informed about the medical and vocational rehabilitation progress and status of claimants than is the case in the group disability insurance industry. Follow up was more frequent, and communication with claimants and health care/vocational providers more informative; however, there is room for improvement. In the group disability insurance industry, the insurers do not pay the treating practitioner and remain comparatively less informed about progress and status. SGI, on the other hand, is paying the treating practitioner (except for direct billing from medical doctors) and should, therefore, be much better informed about the progress of medical rehabilitation.

Coordination

It is important that the assessment and service delivery activities during both medical and vocational rehabilitation be coordinated. Ideally, in medical rehabilitation, the treating practitioner will undertake this function but this does not always happen for cases where there are complexities in primary, secondary, or tertiary care.

During primary treatment more than one treating practitioner may be involved, with two Practitioner Reports in the file early on. During the secondary and tertiary phases, the PIR must ensure that the treating practitioner is kept informed.

The Mercer team found that, in medical rehabilitation, where activities reached a level where coordination was warranted, the PIR's coordinated those activities about one quarter of the time.

"Did PIR coordinate assessment activities (in medical rehabilitation)?"

	IRB	**%**	**Non-IRB**	**%**	**Total**	**%**
Yes	10	21%	3	6%	13	28%
No	20	43%	14	30%	34	72%
Total:					*47*	*100%**

In vocational rehabilitation, coordination of assessment activities occurred just under half of the time.

"Did PIR coordinate assessment activities (in vocational rehabilitation)?"

	IRB	**%**	**Non-IRB**	**%**	**Total**	**%**
Yes	5	42%	0	0%	5	42%
No	7	58%	0	0%	7	58%
Total:					*12*	*100%*

The Mercer team took a more extensive look at how vocational rehabilitation service providers coordinated planning and follow-up activities. We found that they usually coordinated planning with the claimant, employer, and physician. This is a good practice and is typical for rehabilitation providers who sub-contract to other Canadian insurers including group disability carriers.

"Did vocational rehabilitation coordinate planning with claimant, employer, and physician?"

	IRB	**%**	**Non-IRB**	**%**	**Total**	**%**
Yes	10	63%	1	6%	11	69%
No	5	31%	0	0%	5	31%
Total:					*16*	*100%*

However, we found that vocational rehabilitation service providers coordinated with *other* providers (e.g. medical providers) in implementation of the IWRP only half of the time. Although we cannot offer an acceptable percentage and the sample size is small, it is our judgement that this level of coordination is low.

"Did vocational rehabilitation coordinate with other providers (implementation) of the IWRP?"

	IRB	**%**	**Non-IRB**	**%**	**Total**	**%**
Yes	7	44%	1	6%	8	50%
No	8	50%	0	0%	8	50%
Total:					*16*	*100%*

When it came to follow-up (i.e., staying "on top" of a case where an employee has returned to work to prevent relapse) vocational rehabilitation service providers rarely coordinated this activity with anyone.

	IRB	**%**	**Non-IRB**	**%**	**Total**	**%**
Yes	1	13%	0	0%	1	13%
No	6	75%	1	13%	7	88%
Total:					*8*	*101*%*
	**Rounding*					

Once again, SGI compared favourably to the group disability insurers. Coordination is not always well-handled in that market, and vocational rehabilitation providers, or the health care provider often must provide this service themselves.

Control of Claims

A case manager should exert a degree of control over both medical and vocational rehabilitation. In medical rehabilitation, "control" could be more properly described as "influence", i.e., the case manager should be attempting to influence the medical community in accordance with guidelines. In vocational rehabilitation, the case manager should be more directive when it comes to the claimant's return to work and the management of vocational rehabilitation service providers.

The Mercer team evaluated who appeared to be in control of each of the 101 claims. The PIR alone was judged to be in control 11% of the time. The PIR, in combination with other parties (e.g. treating practitioner, claimant, service provider, or others) was judged to be in control 21% of the time. This means that others were in control two-thirds of the time. The claimant was judged to be in control 12% of the time.

Consequently, the PIR was seen to be participating in the control of the claim 32% of the time. We suggest that the PIR should be in control of a majority of claims rather than the smaller amount seen here.

"Who controlled the claim?"

	IRB	**%**	**Non-IRB**	**%**	**Total**	**%**
PIR	8	16%	3	6%	11	11%
Combination including PIR	10	20%	11	22%	21	21%
Combination not including PIR	12	24%	6	12%	18	18%
Claimant	2	4%	10	20%	12	12%
Physician	9	18%	6	1%	15	15%
Service Provider	4	8%	4	8%	8	8%
Other	0	0%	1	2%	1	1%
Unclear	5	10%	8	16%	13	13%
No data	1	2%	1	2%	2	2%
Total:	*51*	*102%**	*50*	*100%*	*101*	*101%**

** Rounding*

In the majority of cases, the PIR's were not given a great deal of opportunity for involvement in the claim. In many instances, treatment was complete or nearly so before the PIR became involved, and/or the case resolved as a result of the initial treatment plan and therefore did not require their involvement in this element of the case.

Use of Vocational Rehabilitation

Mercer found that the PIR's used vocational rehabilitation service providers appropriately. 21 claimants (19 with IRB's and two without IRB's) were referred to vocational rehabilitation. The average time of referral was 20 weeks from date of loss while the median was 10 weeks. The difference between median and average indicates that some PIR's brought these service providers in early in the claim. The Mercer team found only two claims where claimants, who were not referred to vocational rehabilitation, should have been referred. This is a very low incidence (2%). We would also point out that out of 19 claims where we could determine who identified the need for vocational rehabilitation, it was the PIR in 16 (84%) of the cases.

In at least two cases, vocational rehabilitation providers were brought in to be the case manager specifically because of the complex nature of the case or the multiple services which the claimant needed. In these cases, the need was not necessarily for vocational rehabilitation only, but for a variety of services. This is an excellent use of resources – it ensures that the PIR can continue to provide good service to the rest of his/her caseload while ensuring that sufficient attention is given to the neediest claimants.

Ongoing Rehabilitation Case Management Training of PIR's

Although asked to do so, the Mercer team was unable to comment on the effectiveness of SGI's training or on any training deficiencies. If there had been glaring differences in case management or customer service, then training recommendations would have been forthcoming. Since we believe that SGI is doing a good job in these areas, no recommendations on training are forthcoming.

Success of the Conversion from Tort to the Rehabilitation Case Management Model

It is our opinion that this conversion has been a success. We have noted areas which should be examined for improvement and we are providing recommendations in the following section. Nevertheless, SGI is conducting Rehabilitation case management in a manner which is significantly superior to group disability insurers who have had much more time to refine their practices.

However, since the group disability insurers do not pay the treating practitioners and SGI does, its bar must be higher. The following recommendations are presented with a view toward helping SGI to fulfill its rehabilitation case management mandate more completely.

Recommendations

Recommendation #1

SGI should revisit the definition of disability contained in the Automobile Accident Insurance Act and its regulations and provide PIR's with guidelines for adjudicating to it.

As mentioned earlier, this definition of disability does exist and will be a useful tool to PIR's in their efforts to determine if an injury does, in fact, constitute a disability as per the intention of the Act. We are referring to an injury which causes an impairment (loss of function) which, when compared to a claimant 's occupation, results in a disability and time lost from that occupation.

Recommendation #2

Document adjudication processes and decisions more thoroughly.

As noted earlier, the Mercer team could not find much evidence that the PIR's were following a typical adjudication process of:

- Determining eligibility
- Adjudicate threshold entitlement
- Determine indemnity or other entitlement.

Recommendation #3

SGI should itself review compliance with the timelines for referral to secondary and tertiary assessment.

These timelines were not followed in almost 40% of the files. The reasons were not evident, but may be valid. SGI should re-visit these timelines, established in 1995-96, to determine why they are not being followed and to establish a documented process for both enforcing the timelines as well as a process for extending them under well defined and well documented conditions.

Recommendation #4

> SGI should develop a method for demonstrating and documenting why the recommended timelines for referral to secondary and tertiary assessment have been extended.

This will provide PIR III's, supervisors, and future reviewers with written reasons why these crucial timelines were extended. This should be particularly important to a PIR who sees medical improvement and elects not to refer the next level of assessment.

Appendix

Phases of Rehabilitation

The optimal rehabilitation, both medical and vocational, occurs when it moves smoothly through four phases guided by the case manager.

- *Assessment*

  In medical rehabilitation, the treating practitioner determines the diagnosis.

  In vocational rehabilitation, the PIR or a vocational rehabilitation consultant (VRC) determines the barriers to RTW or return to pre-accident activities.

- *Planning*

  In medical rehabilitation, the treating practitioner informs the patient as to the recommended treatments, therapies, and medications.

  In vocational rehabilitation, the PIR or the VRC, in concert with the claimant and in consultation with the employer, develops a plan for RTW or return to pre-accident activities.

- *Plan Implementation*

  In medical rehabilitation, the treating practitioner administers the therapies, treatments, and medications which have been prescribed.

  In vocational rehabilitation, the PIR or VRC oversees the activities required to attain the goal identified in the planning phase.

- *Follow-up*

  In medical rehabilitation, the treating practitioner may contact the claimant after successful conclusion of treatment to reduce the possibility of a relapse. In practice, this is rarely if ever done.

  In vocational rehabilitation, the PIR or VRC contacts the claimant after a successful RTW or return to pre-accident activities, again, to reduce the possibility of a relapse into total disability.

Functions of Case Management

Ideally, the functions are carried out by the case manager across all four phases of rehabilitation. In practice, some of the case management functions are done by individuals other than the case manager, e.g., the treating practitioner.

The functions listed here are described as they currently apply to PIR's case managing injured claimants in Saskatchewan.

- *Identification*

  In medical rehabilitation, the treating practitioner is usually the one who identifies whether or not an injured person requires medical rehabilitation.

  In vocational rehabilitation, the PIR usually identifies if a claimant requires assistance to RTW or to return to pre-accident activities.

- *Authorization*

  In medical rehabilitation, authorization for medical services is not very clear cut. Physiotherapists usually inform the PIR by fax that treatment is occurring in order to receive payment. Physicians, who are paid by the Saskatchewan public health system, need not inform SGI about treatment until they send in the Practitioner's Report. Although the authorization for medical services should technically be a case management function, in this scenario, it initially rests with the treating practitioner.

  In vocational rehabilitation, the PIR personally conducts vocational planning and other activities, or delegates it to a VRC. Authorization in vocational rehabilitation is more clearly the responsibility of the PIR.

- *Monitoring*

  In medical rehabilitation, it is the PIR's responsibility to observe and evaluate medical treatment which is aimed at RTW or return to pre-accident status.

  In vocational rehabilitation, it is the PIR's responsibility to observe and evaluate all vocational activities which seek to RTW or return to pre-accident activities.

- *Coordination*

  In medical rehabilitation, the treating physician should coordinate the activities of all health care providers. However, this does not always occur and is often left to the PIR. This function requires a case manager to ensure that all providers, the employer, and the claimant know what is happening in the claim, and that all goods and services are delivered in a timely way.

  In vocational rehabilitation, the PIR may retain the coordination function or may delegate it to a VRC.

Given the phases and functions of medical and vocational rehabilitation as provided in this template, it is clear that some case management functions may be done by the treating practitioner or the VRC while others are undertaken by the PIR who has been informally designated as the case manager. This complexity has led to some of the confusion of roles as well as some of the criticisms levelled at PIR's in the media (e.g. they try to direct medical treatment).

Mercer's findings and recommendations are based upon this template and the roles of these three parties in an attempt to bring more clarity to rehabilitation case management as practiced at SGI.

Statistics

Data		IRB	No IRB	Totals
Total number		51	50	101
Younger		20	37	57
Older		14	4	18
Other		14	9	23
Catastrophic		3	0	3
		51	50	101
Rural				
	Emp	7	3	10
	Farmer	6	2	8
	Self-emp not farmer	4	5	9
	Surveillance	3	1	4
	Non employed	0	3	3
Urban				
	Emp	17	17	34
	Farmer	0	4	4
	Self-emp not farmer	5	7	12
	Surveillance	4	1	5
	Non employed	1	4	5
North				
	Emp	3	0	3
	Farmer	0	0	0
	Self-emp not farmer	0	1	1
	Surveillance	1	1	2
	Non employed	0	1	1
		51	50	101
Initial Claims Decision Info				
	App For Benefits and Pract Report	42	37	79
	App For Benefits	7	9	16
	Practitioner report	1	3	4
	No data	1	1	2
		51	50	101
plus:	Hospital record	3	2	5
	Consult report	2	1	3
	Physical analysis	9	0	9
	Medical consultant review	1	0	1
	Tests	1	0	1
	Job description	6	0	6
	Other	8	3	11
Approp. initial entitlement decision based on doc.?				
	Yes	40	44	84
	No	1	0	1
	Unclear	7	3	10
	No data	3	3	6
		51	50	101
Timely and appropriate case mgmt plan?				
	Yes	8	4	12
	No	32	33	65
	Unclear	6	7	13
	No data	4	5	9
	N/A	1	1	2
		51	50	101

Data		IRB		No IRB		Totals
Did PIR follow Uniform Guidelines?						
	Yes	17		23		40
	No	12		12		24
	Unclear	4		4		8
	N/A	16		11		27
	No data	2		0		2
		51		*50*		*101*
Did PIR follow Chart of Approved interventions?						
	Yes	25		31		56
	No	3		5		8
	Unclear	4		2		6
	N/A	17		12		29
	No data	2		0		2
		51		*50*		*101*
Is it clear who is primary med practitioner?						
	Yes	28		29		57
	No	17		13		30
	No data	5		8		13
	N/A	1				1
		51		*50*		*101*
Total # of referrals to secondary assessment						
	Yes	15		9		24
	No	7		1		8
	N/A	18		29		47
	No data	11		11		22
		51		*50*		*101*
# DOL to date of referral to sec. ass - average		111 days	16 wks	131 days	19 wks	119 days
# DOL to date of referral to sec. ass - median		79 days	11 wks	70 days	10 wks	75 days
Total # of referrals to tertiary assessment						
	Yes	9		3		12
	No	4		4		8
	N/A	19		25		44
	No data	19		18		37
		51		*50*		*101*
# DOL to date of referral to tert. ass - average		236 days	34 wks	621 days	89 wks	332 days
# DOL to date of referral to tert. ass - median		203 days	29 wks	830 days	119 wks	221 days
# referred to VR						
	Yes	19		2		21
	No	31		47		78
	N/A	0		1		1
	No data	1		0		1
		51		*50*		*101*
# referred to VR: DOL to date of referral to voc. rehab -average		157 days	22 wks	7 days	1 wk	143 days
# referred to VR: DOL to date of referral to voc. rehab -median (10 factored with 9 dates unknown or unclear)		99 days	14 wks	7 days	1 wk	68 days

Data		IRB	No IRB	Totals
Who identified need for VR:				
	PIR	14	2	16
	Treating Practitioner	0	0	0
	Assessment Centre	1	0	1
	Others	2	0	2
	N/A	34	48	82
		51	50	101
# not referred to VR but should have been		2	0	2
Identification				
Total # of referrals to secondary assessment		15	9	24
Did PIR identify need for sec. referral				
	Yes	13	10	23
	No	12	8	20
	Unclear	2	0	2
	N/A	24	31	55
	No data	0	1	1
		51	50	101
Total # of referrals to tertiary assessment		9	4	13
Did PIR identify need for tert. referral				
	Yes	6	3	9
	No	8	5	13
	Unclear	1	0	1
	N/A	35	40	75
	No data	1	2	3
		51	50	101
Authorization				
Did PIR provide guidance in referrals to sec. & tert. ass. voc. rehab				
Med Rehab:				
	Yes	9	5	14
	No	13	12	25
	Unclear	5	2	7
	N/A	22	30	52
	No data	2	1	3
		51	50	101
Voc Rehab:				
	Yes	7	1	8
	No	11	0	11
	Unclear	1	0	1
	N/A	32	49	81
	No data	0	0	0
		51	50	101
Did PIR authorize all med. treat and impl. of IWRP				
Med Rehab:				
	Yes	15	22	37
	No	18	5	23
	Unclear	9	7	16
	N/A	8	15	23
	No data	1	1	2
		51	50	101

Data			IRB	No IRB	Totals
	Voc Rehab:				
		Yes	7	0	7
		No	4	0	4
		Unclear	2	1	3
		N/A	37	49	86
		No data	1	0	1
			51	50	101
Did PIR ensure follow-up					
	Med Rehab:				
		Yes	9	9	18
		No	25	14	39
		Unclear	0	2	2
		N/A	13	24	37
		No data	4	1	5
			51	50	101
	Voc Rehab:				
		Yes	5	0	5
		No	6	1	7
		Unclear	0	0	0
		N/A	38	48	86
		No data	2	1	3
			51	50	101
Monitoring					
Did PIR obtain med. treat plan and/or IWRP					
	Med Rehab:				
		Yes	35	27	62
		No	14	10	24
		Unclear	0	1	1
		N/A	2	11	13
		No data	0	1	1
			51	50	101
	Voc Rehab:				
		Yes	9	0	9
		No	7	0	7
		Unclear	0	0	0
		N/A	35	49	84
		No data	0	1	1
			51	50	101
Did PIR obtain med. & voc. rehab progress reports					
	Med Rehab:				
		Yes	36	26	62
		No	11	9	20
		Unclear	0	0	0
		N/A	4	14	18
		No data	0	1	1
			51	50	101

Data		IRB	No IRB	Totals
Voc Rehab:				
	Yes	15	1	16
	No	1	0	1
	Unclear	0	0	0
	N/A	35	49	84
	No data	0	0	0
		51	50	101
Did PIR request med. pract. to complete follow-up form				
Med Rehab:				
	Yes	2	2	4
	No	34	20	54
	Unclear	0	3	3
	N/A	14	24	38
	No data	1	1	2
		51	50	101
Coordination				
Did PIR coordinate ass. activities				
Med Rehab:				
	Yes	10	3	13
	No	20	14	34
	Unclear	4	3	7
	N/A	17	28	45
	No data	0	2	2
		51	50	101
Voc Rehab:				0
	Yes	5	0	5
	No	7	0	7
	Unclear	1	0	1
	N/A	37	50	87
	No data	1	0	1
		51	50	101
Did voc. rehab coord planning with clmt, er, phys.				
Voc Rehab:				
	Yes	10	1	11
	No	5	0	5
	Unclear	1	0	1
	N/A	35	49	84
	No data	0	0	0
		51	50	101
Did voc rehab coord. with other providers in IWRF				
Voc Rehab:				
	Yes	7	1	8
	No	8	0	8
	Unclear	1	0	1
	N/A	35	49	84
	No data	0	0	0
		51	50	101

Data		IRB	No IRB	Totals
Did voc rehab coord follow-up activities of er and other providers				
Voc Rehab:				
	Yes	1	0	1
	No	6	1	7
	Unclear	0	0	0
	N/A	43	49	92
	No data	1	0	1
		51	*50*	*101*
Evidence of cost control				
	Yes	2	2	4
	No	42	38	80
	Unclear	3	1	4
	No data	4	8	12
	N/A	0	1	1
		51	*50*	*101*
Who controlled claim				
	PIR	8	3	11
	Combo including PIR	10	11	21
	Combo not including PIR	12	6	18
	Claimant	2	10	12
	Physician	9	6	15
	Service Provider	4	4	8
	other	0	1	1
	Unclear	5	8	13
	No data	1	1	2
		51	*50*	*101*

SGI
Chart of Approved Interventions

Type of Injury	Interventions Proven Effective	Interventions Not Proven Effective	Interventions Contraindicated
WAD Grade I	• Normal Activity • Exercise - Homebased • Patient Education • Initial Assessment with maximum of 2 follow up visits	Cervical Pillows Manipulation Mobilization Massage Therapy Acupuncture TENS Ultrasound Laser C-Spine X-rays Spray and Stretch Traction	Cervical Collar Rest/Inactivity Surgery Medications

Type of Injury	Interventions Proven Effective	Interventions Not Proven Effective	Interventions Contraindicated
WAD Grades II & III	• Modified Activities Duration 3 weeks or less • Analgesics and/or Anti-inflammatories Non-narcotic analgesics and nonsteroidal anti-inflammatory (NSAIDS) agents should not be necessary for longer than 1-2 weeks. Narcotic analgesics may occasionally be needed in ***severe*** Grade II or III WADs, but always for a short term, and being replaced by non-narcotic agents as soon as possible. • Manipulation and/or Mobilization Performed by a physiotherapist (who meets competency standards for manipulation) or chiropractor and should be used early in the course of the injury, and only as part of a larger treatment strategy that promotes activation and return of mobility. Long term chiropractic or physiotherapy treatment without secondary or tertiary assessment is not justified. • Massage Therapy Therapeutic massage will only be approved if it is part of a larger treatment strategy that promotes activation and return of mobility and then only if it is shown to directly improve the claimant's ability to take part in an approved activation program. • Cervical Spine X-rays • Exercise • Patient Education	• Cervical collar Rare ***severe*** Grade II or III WAD may require rest of neck with collar; should not be longer than 4 days. • Psychoactive Drugs Minor tranquilizers or antidepressants should not be needed in acute soft tissue injuries, including neck and lower back injuries. They may be used as an adjunct in chronic soft tissue problems. • Cervical Pillows • Spray and Stretch • Traction Can be used in combination with other mobilizing interventions, but should only be used for a short-term, early in the course of the injury. • Passive Modalities Adjunct passive modalities such as ultrasound, TENS, thermal therapy (application of heat and cold), laser, and acupuncture would only be approved as part of an overall mobilization/activation plan.	• Bed rest • Muscle Relaxants • Surgery Only indicated in WAD Grade III claimants with progressive neurologic deficit or persisting arm pain. • Injection of Joint Injection of steroids into joints in the neck or lower back is not a recommended treatment for WAD, of any Grade.

Type of Injury	Interventions Proven Effective	Interventions Not Proven Effective	Interventions Contraindicated
Low Back Injuries Grade I	• Modified Activity Patients may be more comfortable if they temporarily limit/avoid activities known to increase mechanical stress on the lower back such as prolonged unsupported sitting, heavy lifting, and repetitive bending. • Exercise Aerobic endurance exercises (i.e.: walking, biking and swimming), which minimally stress the lower back are better tolerated during the first 2 weeks of a lower back injury than conditioning exercises for trunk muscles, which may aggravate symptoms. The trunk muscle conditioning exercises can be introduced later in the treatment program. • Patient Education • Initial Assessment with maximum of 2 follow-up visits.	• Lumbar Corset • Medications • Manipulation • Mobilization • Massage Therapy • Acupuncture • TENS • Ultrasound • Laser • L-Spine X-rays • Spray and Stretch • Traction	• Rest/Inactivity • Surgery

Type of Injury	Interventions Proven Effective	Interventions Not Proven Effective	Interventions Contraindicated
Low Back Injuries Grade II & III	• Modified Activities Duration 6 weeks or less • Analgesics and/or Anti-inflammatories Non-narcotic analgesics and nonsterodial anti-inflammatory (NSAIDS) agents should not be necessary for longer then 2-4 weeks. Narcotic analgesics may occasionally be needed in ***severe*** Grade II or III low back injuries, but always for a short term, and being replaced by non-narcotic agents as soon as possible. • Manipulation and/or Mobilization performed by a physiotherapist (who meets competency standards for manipulation) or chiropractor and should be used early in the course of the injury and only as part of a larger treatment strategy that promotes activation and return of mobility. Long term chiropractic or physiotherapy treatment without multi-disciplinary evaluation not justified. Before manipulation and/or mobilization is initiated on low back patients with progressive or severe neurologic deficits, assessment must be done to rule out serious pathology.	• Lumbar Corset In certain cases, short term (less than 2 weeks) use of a lumbar corset is justified, but only if it allows an increased level of activity. • Lumbar Spine X-rays Plain X-rays of the lower back are not necessary within the first month of the injury, unless there is reason to believe that a fracture has occurred, or that the acute injury co-exists with a spinal tumor or infection. • Traction • Acupuncture • Psychoactive Drugs • Minor tranquilizers or antidepressants should not be needed in acute soft tissue injuries, including neck and lower injuries. They may be used as an adjunct in chronic soft tissue problems. • Spray and Stretch	• Injection of Joints Injection of steroids into joints in the neck or lower back is not a recommended treatment for lower back injury of any Grade. • Bed Rest Would only be approved for severe initial symptoms, and then only for 2-4 days at the very most. • Surgery Surgery for lower back injuries must be for specific indications (i.e.: to remove a herniated disc, or stabilize an area of the lower back that is unstable due to spondylolisthesis), not just because the pain has not been relieved by other forms of treatment.

Type of Injury	Interventions Proven Effective	Interventions Not Proven Effective	Interventions Contraindicated
Low Back Injuries Grade II & III (cont'd)	• Massage Therapy Will only be approved if it is part of a larger treatment strategy that promotes activation and return of mobility and then only if it is shown to directly improve the claimant's ability to take part in the activation program. • Exercise • Patient Education • Muscle Relaxants Particularly when used in combination with nonsteroidal anti-inflammatories, can be used short-term in lower back injuries, if in conjunction with a strategy to activate and mobilize.	• Passive Modalities Ultrasound, TENS, thermal therapy (application of heat and cold), laser, and acupuncture would only be approved as part of an overall mobilization/activation plan and then only if shown to directly improve claimant's ability to participate in the activation program.	

Appendix C

PricewaterhouseCoopers LLP Report

PRICEWATERHOUSECOOPERS

Personal Injury Protection Plan Review Committee

Report of the Actuary on the Valuation of the Recommendations of the Review Committee

December 2000

PRICEWATERHOUSECOOPERS

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Mr. Ken Cooper-Stephenson
Chair
Personal Injury Protection Plan Review Committee
Suite 1590, 2002 Victoria Avenue
Regina, SK S4P 0R7

December 15, 2000

Dear Mr. Cooper-Stephenson:

Please find enclosed our Report of the Actuary on the Valuation of the Recommendations of the Review Committee for the Personal Injury Protection Plan.

This report presents the cost impact of the recommendations of the Final Report of the Review Committee, of which this document is an appendix.

Yours truly,

Jean-Luc E. Allard, FCIA FCAS MAAA
Partner
Assurance and Business Advisory Services

Enclosure

PricewaterhouseCoopers refers to the Canadian firm of PricewaterhouseCoopers LLP and other members of the worldwide PricewaterhouseCoopers organization.

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Section A

Introduction and Scope

Purpose

Section 220 of The Automobile Accident Insurance Act in the province of Saskatchewan indicates the "Lieutenant Governor in Council shall appoint a review committee… the review committee shall review… all matters concerning this Part, the regulations made pursuant to this Part and the administration of this part and the regulations made pursuant to this Part…"

I have been retained by the Personal Injury Protection Plan Review Committee ("the Review Committee") to assist them in their review of the automobile insurance system in the province of Saskatchewan. My engagement encompasses the following.

- The valuation and discussion of alternative amendments and recommendations contemplated by the Review Committee.
- The presentation of alternative systems and processes used in other provinces such as Manitoba, British Columbia and Québec.
- The report of the actuary supporting the cost impact of the final recommendations of the Review Committee.

This report refers to the last point above and presents the cost impact of the final recommendations of the Review Committee.

My name is Jean-Luc E. Allard, and I am a Fellow in good standing of the Canadian Institute of Actuaries, a Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries.

My business address is:

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Distribution and Use

This report should be read in its entirety. This report is an integral part of the report of the Review Committee containing its final recommendations with regard to the automobile insurance system in the Province of Saskatchewan. This report is a public document. PricewaterhouseCoopers LLP assumes no responsibility for use by or disclosure of this report for any other purpose.

Reliance

The evaluation of the cost impact of the recommendations of the Review Committee reflects the wide-ranging sources of information used in the deliberations of the Review Committee. Our discussions and therefore our reliance extends to the Review Committee, the management of Saskatchewan Government Insurance (SGI) and its actuary, Statistics Canada and lawyers, actuaries and specialists in the automobile insurance field.

The data from these different sources was not audited by PricewaterhouseCoopers LLP or by an external auditor. We relied on this information without verification. However, we have reviewed the data for reasonableness. The accuracy of our results is dependent on the accuracy and completeness of the underlying data. Any discrepancies should be reported and, if necessary, this report amended accordingly.

Limitations

The projected costs shown in this report are point estimates. As estimates, these values are subject to variability, and this variability can have a material impact in the near term. The possibility of this variability arises from the fact that all factors affecting the actual costs have not taken place and cannot be evaluated with absolute certainty. Such factors may include, but are not limited to, change in judicial interpretation of policy provisions and expected future inflationary trends.

Our projection of costs is based on historical experience in the province of Saskatchewan. We have anticipated no extraordinary changes to the various factors that might impact the future cost of claims. We have, however, used methods of estimation that we believe produce reasonable results given current information. No guarantee, either expressed or implied, should be inferred that our estimates will develop as shown in this report.

The valuation of the cost impacts of the recommendations considered by the Review Committee is not an endorsement of these recommendations by either the author or PricewaterhouseCoopers LLP.

Section B

Presentation of the Report

This report presents the cost impact of the final recommendations of the Review Committee. The first section includes a discussion of the purpose of the report, its distribution and use, a description of our reliance and an explanation of the limitations of our estimates.

This section presents the format of the report.

The next section is an Executive Summary of the cost impact for each recommendation of the Review Committee discussed in their Final Report, of which this report is an appendix. The Executive Summary presents a summary of the recommendations along with our estimates of the cost impact to the automobile insurance system in the province of Saskatchewan.

The rationale and supporting information is also referenced in the Executive Summary, which is followed by Section D, a presentation of the methods, assumptions and results of the valuation of specific recommendations.

Section C

Executive Summary

Introduction

The Executive Summary follows the order of the recommendations presented in Chapters 1, 2, and 3 of the Final Report of the Review Committee, of which this report is an appendix. Chapters 1, 2 and 3 include recommendations relating to coverage and benefits.

The valuation of the cost impact reflects our understanding of the current system and the intent of the recommendations proposed by the Review Committee. This valuation is based on the following:

- Information, both written and verbal, provided by management of Saskatchewan Government Insurance, specifically with regard to claims management;
- The work of the consulting actuary of Saskatchewan Government Insurance, including the work related to the cost impact of the recommendations made by SGI to the Review Committee;
- Statistical data provided by Statistics Canada for the Province of Saskatchewan; and,
- Reports and discussions with related parties such as lawyers, actuaries and specialists in the automobile insurance field regarding interpretations of the Act and its Regulations, both in terms of the benefits provided by PIPP and the tort aspects of the Automobile Accident Insurance Act.

Each individual Review Committee recommendation decreases or increases the amount of benefits to automobile injured parties in the province of Saskatchewan. In some cases, increases in benefits to injured parties may not necessarily increase the cost of the automobile compensation system. For example, this situation occurs when a third party not covered by the automobile compensation system is proven negligent. The negligent third party then covers the cost of the award to the automobile accident victim. Where these situations occur, we have attempted to provide both the additional benefits to injured parties and also the cost, if any, to the automobile compensation system.

A number of the recommendations have an immaterial impact on the cost of the system. They are presented in the Executive Summary as Minimal Decrease, Minimal Increase or Nil. These situations happen for a number of reasons. Most cases reflect the small number of individuals who would be impacted or the small impact on the amount of benefits. The recommendations where the impact is nil reflect a clarification of the regulations, which corresponds to the current interpretation of SGI. It may also reflect a recommendation which increases the benefits to the injured parties, but which currently is covered by ex-gratia payments.

Some Review Committee recommendations correspond to the recommendations made by SGI to the Review Committee. To evaluate the cost impact of these recommendations we have used the work performed by the consulting actuary of SGI. We have reviewed the reasonableness of the methods and assumptions used by the actuary. We have concluded that their costing is reasonable and have accepted their costing as presented to the Review Committee.

Other recommendations were subject to an independent valuation. The methods and assumptions regarding these cost impacts are included in Section D, Valuation of Specific Recommendations.

The evaluation of costs of the final recommendations is for year 2000.

The following Executive Summary provides the cost estimate for each final recommendation of the Review Committee which was subject to an actuarial evaluation. They correspond to Chapters 1, 2, and 3 of the Review Committee's report.

The General Type of Scheme to Adopt

That Saskatchewan continue with its Personal Injury Protection Plan with improved benefits and service, and with an enhanced role for tort law.

Evaluation of cost impact	**$ 4,593,556**[*]

Tort Actions for Economic Loss

That a tort action for economic loss in excess of benefits be retained.

That the tort action for economic loss be extended to cover all economic loss in excess of the benefits.

That pre-judgement interest be awarded on tort damages for economic loss in the amount recoverable at common law.

That the requirement of proof for future losses be on the basis of "simple probability" as at common law, rather than on "a balance of probabilities".

That the tort action under Section 103 be available in Small Claims Court as well as in the Court of Queen's Bench.

Evaluation of cost impact	**$ 941,000**

Rationale:

- **Tort action extension to cover all economic loss: costed by SGI's actuary at $941,000.**
- **Pre-judgement interest: Nil cost since SGI automatically considers and pays excess economic loss claims.**

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[*] Excludes the cost associated with the new appeals and advocacy structure discussed in Chapter 4 of the Final Report of the Review Committee and costed at $1,000,000.

- **Small Claims Court: Minimal increase. SGI automatically considers and pays economic loss claims. Because of the internal review process and the current claims adjusting approach of SGI for tort claims, the increase in cost will be minimal.**

Tort Action Against Third Parties

That a tort action for all losses be available against institutional third parties whose negligence was proximately related to the accident.

That a tort action for all losses be available against health professionals and institutions when, as a result of their negligence the injured person's injuries are made worse.

Evaluation of cost impact **Minimal Decrease**

Rationale:

- **Tort awards to injured parties will be paid by institutional third parties, health professionals and institutions that are not covered by SGI.**
- **The benefits paid through PIPP could also be recovered or subrogated by SGI from the third party at fault, hence the potential minimal decrease in cost to SGI.**

Tort Action when a Vehicle is used as a Weapon of Choice

That full Personal Injury Protection Plan benefits be available to any person injured when a vehicle has been used as "a weapon of choice" to harm that person.

That a tort action, including the possibility of "aggravated" and "exemplary" damages, be available for all losses incurred by an injured person where a vehicle has been used deliberately and specifically to harm that person.

That SGI have the discretion to recover benefits paid from any person criminally responsible for deliberately causing injuries.

That a person who is injured in the course of intentionally causing personal injury to another, and who is convicted of a criminal offence in relation to that conduct, be denied both an income replacement benefit and a permanent injury benefit but remain entitled to benefits for rehabilitation and expenses.

That a person who is injured in the course of intentionally causing personal injury to another have no right of action in tort against anyone if the circumstance should occur that an action might otherwise be available.

Evaluation of cost impact **Minimal Decrease**

Rationale

- This recommendation clarifies the claims adjusting process of SGI in the case of a vehicle used as a weapon of choice. It also provides additional benefits to injured parties in terms of aggravated and exemplary damages which would be awarded from the at-fault party. These additional benefits are not the responsibility of SGI.
- However, PIPP benefits and excess economic loss paid under tort to injured parties could be recovered through subrogation. The collectibility of subrogation judgements may be hindered by credit risk, hence the potential minimal decrease in cost to SGI.

Tort Action and Benefits for Impaired Drivers

That Personal Injury Protection Plan benefits excluding the Permanent Impairment Benefit be provided to a person injured in a motor vehicle accident who is subsequently charged and convicted of a first offence for impaired driving;

That rehabilitation benefits but not income replacement or permanent injury benefits be provided to a person injured in a motor vehicle accident who is subsequently convicted of impaired driving in relation to that accident and who has been convicted of impaired driving or a .08 offence within a five year period previous to the current conviction;

That a tort action be available against the at-fault driver to other persons injured as a result of a motor vehicle accident where the driver is subsequently convicted of impaired driving in relation to that accident and who has been convicted of impaired driving within a five year period previous to the current conviction.

Evaluation of cost impact **$ (359,357)**

Rationale:

- Denial of Permanent Impairment Benefits: status quo.

- **Denial of Income Replacement Benefits after conviction: (See Section D) $ (574,472).**
- **Tort Actions against Impaired Drivers: (See Section D) $ 215,115**

Benefit for Rehabilitation Expenses

That the medical and rehabilitation limit be increased from $541,824 to $5,000,000, with caps on the amount available for weekly personal and home care.

Evaluation of cost impact	**$ 1,453,000**
Rationale:	**See Section D**

Benefit for Personal and Home Care

That the care grids for personal and home care assistance be revised and benefits include activities normal to operating that injured person's home.

Evaluation of cost impact	**$ 345,000**
Rationale:	**Costed by SGI's actuary**

Definition of Catastrophic Injury

That the definition of catastrophic injury be made clear and that it be broadened to include not only quadriplegia, paraplegia and severe brain injury, but also additional impairments such as total blindness and complete loss of two limbs.

Evaluation of cost impact	**Included in "Catastrophic Injury Income"**

Catastrophic Injuries – Lifelong Maintenance

That reasonable home renovations be funded to meet the specific and changing needs of catastrophically injured persons.

Evaluation of cost impact (See Section D) **Nil**

Rationale:

- **Multiple renovations are currently made as necessary and appropriate through ex-gratia payments.**

Benefit for Accompanying Care Expenses

That the accompanying care benefit be expanded to pay expenses and income replacement when another person is helpful to the rehabilitation process if it is recommended by a medical practitioner.

Evaluation of cost impact **Minimal Increase**

Rationale:

- **This recommendation represents minimal change from the current claims management practice.**

Benefit for Permanent Soft Tissue Injury

That for assessing permanent functional impairment, SGI adopt the Manitoba schedule, which includes soft tissue injuries and impairment of neck and back function.

That the Table of Successive Remainders be changed to allow for calculation of the permanent impairment benefit using the method from the American Medical Association guidelines.

Evaluation of cost impact **$ (1,788,000)**

Rationale: **Costed by SGI's actuary**

Maximum Permanent Impairment Benefit

That the amount of the Permanent Impairment Benefit for catastrophic injuries be increased to $175,000.

Evaluation of cost impact	**$ 716,741**
Rationale:	**See Section D**

Consideration of Quebec's New Benefit for Intangible Loss

That SGI evaluate the feasibility and affordability of Quebec's Intangible Loss Benefit.

Evaluation of cost impact	**Nil**

Income Replacement Benefit Calculation

That the income replacement benefit be based presumptively on employment at the time of the accident, but that where the injured person can show that he or she would likely have earned a larger sum in the year prior to the accident, that the income replacement benefit be based on that sum.

That in all cases unless otherwise specified, there be an option available upon request of the claimant for a reassessment of the income replacement benefit after 180 days following the accident, and that from that time onward the income replacement benefit be based on the greater amount of minimum wage or the average annual income in the two years prior to the accident.

That in the case of a person who was a caregiver of one or more persons at the time of the accident, the income be based on an assessment of the probability that the injured person would have earned income in the future and when that income would have been earned; and that the assessment be based on the education, training, work experience and physical and intellectual abilities of the injured person prior to the accident.

Evaluation of cost impact	**Minimal Increase**

Rationale:

- First item is a clarification of Section 113.
- Second item may result in only a few cases with increased benefits.
- Third item would apply in cases where a claimant has significant earning capacity but is taking time from work as a caregiver. A situation where this has financial implications to SGI very rarely arises, and in the current system would be handled on an ex-gratia basis.

Maximum Earnings Covered

That the Maximum Yearly Insurable Earnings (MYIE) remain at $56,855 (and continue to be indexed to the Consumer Price Index).

Evaluation of cost impact	**Nil**
Rationale:	**Status Quo**

Income Replacement Based on 90% of Net Income

That the Income Replacement Benefit continue to be calculated on the basis of 90% of the injured person's net income.

Evaluation of cost impact	**Nil**
Rationale:	**Status Quo**

Catastrophic Injury Income

That in cases of catastrophic injury, with the exception of students and youth, the income replacement benefit be paid from the date of the accident and represent the greater of actual income or the industrial average wage.

That students or youth with catastrophic injury receive the benefit after current studies or at age 16.

That anyone earning greater than industrial average wage at the time of the crash receive an income replacement benefit based on actual income.

Evaluation of cost impact	**$ 1,377,000**
Rationale:	**Costed by SGI's actuary**

Income Replacement Benefit for Injured Persons Over Age 65

That in calculating the Personal Injury Protection Plan income replacement benefit for an injured person over the age of 65, a benefit be paid only if the individual held employment at the time of the crash.

That for an injured person over the age of 65 who held employment at the time of the crash, the income replacement benefit be stepped down over the next four years to age 69.

That if an injured person over the age of 65 has received an income replacement benefit for the previous two years or more, a pension benefit be paid based on the duration of time he or she received an income replacement benefit. That in defining the pension benefit, SGI investigate models such as the one used by the Workers' Compensation Board.

Evaluation of cost impact	**$ (3,022,000)**
Rationale:	**Costed by SGI's actuary**

Deductions of Employment Insurance Premiums and Canada Pension Plan Contributions in Calculating the Income Replacement Benefit

That in calculating the Personal Injury Protection Plan income replacement benefit, deductions continue to be made for employment insurance and Canada Pension Plan premiums.

Evaluation of cost impact **Nil**

Rationale: **Status Quo**

Income Replacement Benefit for Self-employed Persons

That in calculating the Personal Injury Protection Plan income replacement benefit for self-employed persons, the benefit should be the greatest of:

a. actual net income (using prior three years' calculations), adding back certain fixed expenses for the first 12 months only and paying any lease cancellation costs;

b. average Saskatchewan income for that occupation and level of experience (Appendix A of the Regulations), to the limit of actual gross income; if experience is less than three years, full Appendix A be used to allow for business start-up implications; or,

c. replacement labour.

That the injured person be allowed to switch from (a) or (b) to (c) or from (c) to (a) or (b) at any one point when receiving these benefits.

Evaluation of cost impact **$ 951,000**

Rationale:

- **SGI Recommendation which parallels the Review Committee recommendation but fixed expenses which are payable only for six months is costed by SGI's actuary at $814,000.**
- **Inclusion of an additional six months of fixed expenses: (See Section D) $137,000.**

- **Cost of switch between replacement labour and income replacement benefits is in addition to the above costs.**

Contractor Option for Replacement Worker Benefit

That in calculating the replacement worker benefit where the use of specialized equipment owned by the injured person is involved, the injured person may choose to hire, at a cost consistent with market value, a contractor that uses other equipment to perform the work.

Evaluation of cost impact	**Included in "Replacement Worker Benefit for Farmers"**

Replacement Worker Benefit for Farmers

That in calculating the Personal Injury Protection Plan income replacement benefit for farmers who are injured, the cost of contract workers such as custom combine operators be allowed as an alternative for the replacement worker benefit and at a cost consistent with market value for that work.

That in calculating the Personal Injury Protection Plan income replacement benefit for injured farmers, adjustments be allowed to pay up to the maximum annual benefit in variable amounts (i.e., possibly greater than $550 per week) and times (i.e., according to crop year requirements) so that a farmer may hire replacement workers to deal with seasonal work demands over the year.

Evaluation of cost impact (See Section D)	**$ 1,080,000**

Changing the Family Enterprise Benefit to an Income Replacement Benefit

That the Family Enterprise Benefit be moved to the income replacement benefit and be paid until the injured person is recovered or is entitled to an income replacement benefit.

Evaluation of cost impact	**Minimal Increase**

Rationale:

- **Similar to Replacement Worker benefit. Moving this to another section would not materially increase costs.**

Income Replacement Benefit for Students and Youth

That the income replacement benefit for students and youth be based on minimum wage for those who are unable to work at the end of elementary or secondary level studies or age 16, except for those catastrophically injured.

That for catastrophically injured students or youth, and for those studying at the post-secondary level, the benefit be the industrial average wage at the end of studies or age 16.

That a tort action be allowed for actual and potential income loss.

Evaluation of cost impact	**$ 213,172**

Rationale:

- **First two items: costed by SGI's actuary at $ (142,000)**
- **Third item: (See Section D) $ 355,172**

Income and Work Replacement Benefit for Caregivers

That the caregiver benefit be moved into the income replacement benefit division of the Act.

That for the for the first 180 days, the schedule of payments for caregiving be retained, and that an injured person who remains fully incapacitated from caregiving during that period be entitled to the amount in the schedule without proving actual expenses.

That for the first 180 days, where the caregiver has a reduced caregiving role either because the number of persons cared for is reduced, or because children are older, or for any other reason, the caregiving benefit be reduced accordingly.

That after 180 days, caregiver benefits be paid according to the greater of (a) actual and reasonable expenses, within limits or (b) the minimum wage.

That the legislation make clear that injured persons who at the time of the accident worked outside the home and were also responsible for caregiving tasks should have access to both caregiver benefits and income replacement benefits. That the benefits for caregiving be calculated based respectively on the number of persons cared for and the tasks the injured person performed before the accident.

Evaluation of cost impact	**$ 483,000**
Rationale:	**Costed by SGI's actuary**

Death Benefit Payments for Low- or Non-Earners with Dependants

That in calculating the death benefit for low- and non-earners with dependants, a death benefit be paid for each dependant based on minimum wage and the age of the dependant and comparable to the federal government's child support guidelines.

Evaluation of cost impact	**$ 363,000**
Rationale:	**Costed by SGI's actuary**

Benefit for Financial Counselling

That a benefit be included for financial counselling, to a limit of $500, for anyone receiving a significant lump sum benefit, or anyone receiving a long-term income.

Evaluation of cost impact	**Minimal Increase**

Rationale:

- Small amount of benefit

Alternative/Complementary Health Care Therapies and Treatments

That SGI continue to be sensitive to changes in health care with respect to alternative/complementary therapies and treatments for injured persons.

Evaluation of cost impact	**Minimal Increase**

Rationale:

- **While the benefits may be significant for specific individual insureds, the total annual cost is expected to be minimal.**

Top-up of Benefits Available Under First Payer Compensation Plans

That SGI top up any benefits available under first payer compensation plans that are not as generous as the Personal Injury Protection Plan.

Evaluation of cost impact	**$ 193,000**
Rationale:	**Costed by SGI's actuary**

Student and Youth Definitions

That the definition of student and youth be changed so that "youth" includes those children under age 16 who do not attend school; and, "student" and "youth" include a minimum school attendance of 60% and a full-time course load (as defined by the educational institution and recognizing the individual's course load capacity).

Evaluation of cost impact	**Minimal Decrease**

Rationale:

- **Clarification of definitions that will reduce benefits in some ambiguous cases**

Other SGI Recommendations

The following table presents other recommendations made to the Review Committee by SGI. These recommendations are supported by the Review Committee.

SGI Number	Recommendation Description
4	Allow payment for reasonable and actual telephone and television expenses while in a treatment facility.
5	Define relapse to include only crash-related injuries.
9	Allow for payment of a partial loss of studies benefit when part of a semester is missed.
16	Clarify the seven-day waiting period for the replacement worker benefit; pay employer CPP and EI premiums directly to Revenue Canada when there is proof of payment; allow for a replacement worker for each job that an injured person holds.
17	Include as a benefit a lump sum payment for any actual scholarship income lost due to an injury.
18	Pay for any non-refundable book and tuition expenses for all students, including part-time students (formal education only; not recreational).
20	Pay an income replacement benefit for time taken to attend medical appointments during work hours.
21	Increase the income replacement reduction percentage for persons returning to work to 90% of net income received, reducing the additional income received by the injured person, but leaving some incentive to return to work part time.
23	If the deceased held employment in the prior year and had displayed an intention to hold employment, allow the death benefit calculation to be based on an annual income from previous employment. If the deceased was on a formal leave from employment, pay a death benefit based on the last annual income earned.
24	Pay $10,836 to each non-dependant legal parent or child of the deceased. Pay to a maximum of $48,764 (to be distributed equally amongst the survivors) in the case of five or more non-dependant legal parents or children. In the absence of any parent or child, pay the minimum $10,836 to the estate.
25	Increase the funeral expense benefit to $7,500 and allow excess costs to be recovered by the estate of any deceased person not at fault for the crash.
26	Pay the dependant death benefit for the child of a deceased regardless of proof of dependency; pay for a fetus once the child is born.
27	Add a "separation" clause specifying that a spouse (including a common-law spouse) loses the right to benefits when there has been a separation of one year or longer and there are no alimony payments or dependent children. Change the wording to eliminate possible claims by those who previously cohabited with the deceased.
29	Provide a vocational counselling benefit for dependent spouses of deceased persons, to a limit of $500.
30	Provide benefits for grief counselling from a professional counsellor for immediate family members of a deceased person, to a limit of $1,000 per claim
32	If the guardian is not the spouse, pay the dependant death benefit for the children to the Public Trustee. The Public Trustee should be specifically directed to use the funds to pay for the maintenance of the children.
33	Change the definition of dependant to include those mentally or physically disabled over age 21, and pay a dependant death benefit to those dependants over age 21 for life or until no longer disabled.

Evaluation of cost impact **$1,647,000**

Section D - Valuation of Specific Recommendations

Impaired Drivers – Denial of Income Replacement Benefits

Impaired Drivers – Tort Actions against At-Fault Drivers

Benefit for Rehabilitation Expenses

Lifelong Maintenance for Catastrophic Injuries

Maximum Permanent Impairment Benefit

Self-Employed Income Replacement Benefits: Fixed Expenses

Contractor Option for Replacement Workers, Replacement Workers for Farmers, More than One Replacement Worker for Farmers

Income Replacement for Students and Youth – Tort Component

Recommendation – Impaired Drivers – Denial of Income Replacement Benefits

Current System

At-fault drivers convicted of being under the influence of alcohol or drugs at the time of an accident are ineligible for Permanent Impairment Benefits. Income Replacement Benefits (IRB) are available, unless the driver is incarcerated.

Recommendations for Proposed System

It is being recommended that Permanent Impairment Benefits still be denied to those convicted of impaired driving. In addition, it is being recommended that if the driver is convicted, and if they have had another conviction within the last five years, Income Replacement Benefits be denied. Note that a conviction does not necessarily imply incarceration.

Methods

The savings generated by this recommendation are the discounted IRB payments that would otherwise have been paid after conviction. In order to calculate this, we need to know the following:

1. The average length of time between an accident and conviction
2. The actuarial present value of $1 paid weekly for someone who is still disabled at the conviction date, accounting for the time value of money and future death or recovery from disability
3. The average level of weekly benefits paid to claimants
4. The probability of remaining disabled from first payment until the conviction date
5. The expected number of repeat-offending, at-fault impaired drivers who will be convicted

The product of items (2), (3), and (4) above and discounting for the time value of money back to the date of first payment gives the expected savings for each case. Multiplying the result by item (5) gives the total savings.

Information for items (1) and (5) was obtained through SGI. Items (2) and (4) were derived from annuity and disability continuance tables from "Accident Benefits Long Term Disability Losses", by James K. Christie. The assumptions in the Christie paper are consistent with costing for other recommendations as performed by SGI's actuary. Item (3) was derived using data from Statistics Canada, taking into account that IRB benefits are paid based on 90% of Net income.

Assumptions

According to SGI, most impaired driving cases are in the courts within a month after the accident, with judgment from a month to a year or more after that. We have judgmentally selected a six-month period as the length of time until judgment.

The annuities in item (2) above are based on the Christie paper. The tables in the Christie paper are based on the *Report of the Committee to Recommend New Disability Tables for Valuation* published by the Society of Actuaries, 1985, Volume XXXVII. To the extent that the claimant population in Saskatchewan differs from that underlying the tables, there will be additional variability in the estimate. Note, however, that the annuities are discounted with a 7% interest rate, which may be high in today's environment. This gives annuities that may be low. Since this recommendation will result in a savings to SGI, this is a conservative treatment.

The number of impaired drivers is taken from the publication "1999 Saskatchewan Traffic Accident Facts" in the chapter on "Alcohol".

Based on data from SGI, we have assumed that 30% of impaired drivers are repeat offenders. We have assumed that all impaired drivers are at-fault and are brought up on charges. Also, based on data from SGI, we have estimated that the conviction rate of impaired driving cases is 70.2%.

Results

We estimate the savings of this recommendation at $574,472.

Recommendation – Impaired Drivers - Tort Actions against At-Fault Driver

Current System

Injured parties can only pursue tort actions for economic losses in excess of the current no-fault benefits.

Recommendations for Proposed System

It is being proposed that parties injured by impaired drivers have access to a tort action against the impaired driver. This would only apply if the impaired driver is convicted, and the impaired driver has had another conviction within the previous five years (i.e. the driver is a repeat offender).

Methods

To estimate the cost of this recommendation, we relied on data from SGI with regards to the proportion of impaired drivers who are repeat offenders. Also, we used claim number statistics from the publication "1999 Saskatchewan Traffic Accident Facts" in the chapter on "Alcohol". This publication ("Facts") provides the number of accidents resulting in injuries or fatalities due to alcohol. "Facts" also provides the number of *claims* due to such accidents. The difference in the number of claims and the number of accidents gives a potential number of tort claimants. By multiplying by the proportion of impaired drivers who are repeat offenders, we obtain an estimated number of tort claimants. We also had to estimate the proportion of impaired drivers who are convicted. Lastly, we had to estimate the proportion of claims for which SGI would be successful in subrogating against the impaired driver for the amount of the tort award.

We multiplied the number of claimants by the expected severity for each claim to arrive at the total cost of the recommendation.

Assumptions

Since access to tort is already available for excess economic losses, we have assumed that this recommendation will result in extra benefits paid for excess non-economic losses. Specifically, we have assumed that claimants will sue for benefits in excess of the Permanent Impairment Benefit. We used the projected PIB severity, modified for the expected level of excess benefits.

We have assumed that all convicted impaired drivers are at fault and are brought up on charges. Also, based on data from SGI, we have estimated that the conviction rate of impaired driving cases is 70.2% and that SGI would successfully recover the award in 70% of the cases through subrogation against the impaired driver.

Results

We estimate the cost of this recommendation at $215,115 after subrogation recoveries.

Recommendation – Benefit for Rehabilitation Expenses

Current System

Benefits for medical and rehabilitation expenses are limited to $541,824 per accident. There are also specific maximums for some types of expenses.

Recommendations for Proposed System

It is being proposed that the $541,824 limit be increased to $5,000,000.

Methods

The evaluation of the impact on costs for this recommendation is based on the work performed by the actuary of SGI.

The actuary uses curve fitting techniques to estimate the distribution of medical and rehabilitation losses. The techniques made use of actual claims reported to SGI between January 1, 1995 and December 31, 1998. The claims were trended to the 2000 level and capped. Because the goal of the modeling exercise was to estimate the effect of removing the limit, the curves were used to extrapolate the "tail" of the distribution. Therefore, to obtain the best approximation to the true behaviour of losses in the tail, only losses greater than $100,000 (at the 1995 level) were included in the data. A number of distributions were fit to the data. The distributions were ranked based on statistical criteria that measured the quality of their fit to the actual data.

After the loss distribution curves were fit, it was assumed that the annual number of losses in excess of the $100,000 threshold follows a Poisson distribution. For each loss curve, 1,000 simulations were run. The simulated losses in excess of the current limit were used to estimate the cost of eliminating the limit.

Results

The actuarial best estimate of additional costs is $1,453,000.

We have the following two concerns regarding the data used to obtain the estimate that may serve to increase the variability in the estimate:

1. A lack of data in excess of the limit
2. The data that does exist is not fully mature

In order to perform the fits, claims between $100,000 (at the 1995 level) and the current limit were used. This is because the only data that was available was capped at the limit. Since actual information about the cost of claims in excess of the limit is not available, the uncertainty in the estimate is increased.

SGI has confirmed that since the inception of PIPP in January 1995, only two claims have exceeded the limit. Due to the tendency of medical and rehabilitation claims to develop upward over time, there is a high degree of probability that more claims relating to the experience period will hit the limit as time progresses due to loss development. Even for claims that do not hit the limit, upward development can be expected. Thus, due to the immature nature of the claims data, further uncertainty is introduced into the estimate.

Conclusion

We are comfortable with SGI's actuary's best estimate. However, the possibility of significant variation from the estimate exists due to the lack of mature loss information and the lack of information above the limit.

Recommendation – Lifelong Maintenance for Catastrophic Injuries

Current System

Benefits are paid for altering a residence to meet special needs due to an injury. Currently the benefit is intended to be paid on a one-time basis.

Recommendations for Proposed System

The Committee is recommending that "reasonable home renovations be funded to meet the specific and changing needs of catastrophically injured persons". The intent is to provide benefits for renovations throughout the life of the injured person as their situation changes, for example, changes in family status and home location.

Results

Based on discussions with SGI, benefits for renovation expenses are currently provided more than once on an ex-gratia basis if the situation warrants such benefits. As such, we estimate that this amendment will have a nil impact.

Recommendation – Maximum Permanent Impairment Benefit

Current System

Permanent impairment benefits are paid according to a schedule of injuries as a percentage of the maximum benefit. The current maximum benefit for all injuries is approximately $135,000.

Recommendations for Proposed System

It is being proposed that in catastrophic cases, the maximum permanent impairment benefit be changed to $175,000.

Methods

The expected number of catastrophic injuries was multiplied by $40,000 (i.e. the difference between the proposed and current maximum benefits) to arrive at the cost.

Assumptions

In order to estimate the number of catastrophic injuries, we relied on work performed by SGI's actuary, who had calculated the impact of a similar recommendation, where the proposed catastrophic maximum was $270,000. By dividing the cost of that recommendation by the difference in benefits ($270,000 - $135,000) we arrived at an expected number of claims.

Results

We estimate the cost of this recommendation at $716,741.

Recommendation – Self-Employed Income Replacement Benefits: Fixed Expenses

Current System

Income replacement benefits are currently available for self-employed workers. However, the fixed costs associated with running a business are currently not included in the benefit.

Recommendations for Proposed System

SGI presented a recommendation (Recommendation 11) to the Review Committee to deal with the definition of business income for self-employed claimants. Part of the recommendation included the inclusion of six months' worth of fixed expenses. We have evaluated the further cost of including fixed expenses for a full twelve months.

Methods

We have used the work of SGI's actuary to evaluate the impact of including fixed expenses for twelve months. In evaluating SGI's Recommendation 11 the actuary costed the impact of including fixed expenses for six months. We made use of the number of full-time, part-time, and temporary earners claiming income replacement benefits from the actuary's report, as well as the assumed proportion (20%) of those claimants who were self-employed at the date of the accident. In addition, we made use of the monthly expenses assumed in the actuary's report ($1,000).

For this recommendation, we made use of the continuance table from James K. Christie's paper "Accident Benefits Long Term Disability Losses". For the first week after the elimination period, we used termination rates from the Exactor report "Actuarial Report Estimating Discounted Loss Costs and Required Direct Premiums for Ontario Private Passenger Automobile Insurance for the Rating Year starting 01/07/96 under the Government Proposed Product dated February 9, 1996". These tables were used for two purposes:

1. To estimate the proportion of claimants still receiving benefits after six months, and
2. To estimate the number of months these claimants would receive the fixed expense benefit for in the second half of the first year of benefits.

We multiplied the number of claimants by the proportion calculated in (1) above to estimate the number of claims still open at six months. This figure was then multiplied by the number of months estimated in (2) above to find the total estimated number of claimant-months for which fixed expenses would be paid between six and twelve months of disability. This was then multiplied by the expected monthly fixed expense to arrive at the total estimated cost of the proposed amendment.

Assumptions

Based on the above, we have assumed that 12.14% of all self-employed claims would still be open after six months of disability. Also, we have assumed that on average, these remaining claims would receive fixed expense benefits of $1,000 for 3.78 months.

We have assumed that terminations due to recovery or death would follow the continuance tables mentioned in the previous section. We have not assumed any additional terminations of benefits due to a determination of employment after six months. Since some benefits would likely be terminated due to employment determinations, this is a conservative assumption.

Results

Including a 10% provision for adverse deviations, our best estimate of the cost for this amendment is $137,000.

Recommendations – Contractor Option for Replacement Workers, Replacement Workers for Farmers, More than One Replacement Worker for Farmers

Current System

Upon injury, a self-employed person who is eligible for an income replacement benefit may elect to receive a benefit to hire a replacement worker up to a maximum of $596 per week. The choice, once made, is irrevocable.

Recommendations for Proposed System

This section actually deals with two sets of recommendations: general self-employed persons, and farmers. For the general self-employed workers, it is being recommended that if the claimant owns and uses specialized equipment in the course of his or her work, the person may choose to hire a contractor who uses their own equipment (at a cost consistent with market value).

For farmers, a similar recommendation is being made. It is being recommended that the cost of contract workers (such as custom combine operators) be allowed as an alternative to the replacement worker benefit (at a cost consistent with market value). In addition, it is being recommended that adjustments be allowed so that seasonal variations in crop requirements can be handled. In effect, more than the maximum weekly benefit may be paid during busy seasons (harvest, seeding, etc.)

Methods

The cost of all of these recommendations has been calculated together. First, an expected number of replacement labour claims was projected based on data from SGI. An expected number of hours of replacement labour was calculated based on judgment. The cost of hiring multiple contract workers was estimated based on data from SGI. The product of these values gave the expected cost of the recommendation.

Assumptions

We used an expected number of claims of 75 based on data from SGI. We treated all of these claims as if they were farmers, since the general self-employed and farmer recommendations are very similar. This is a conservative treatment.

We assumed that the contractor option would be exercised during a busy season for four to eight weeks and for 80 to 40 hours per week, limited to 320 hours of contract labour.

SGI has indicated, based on data from a list of contractor prices, that labour costs for contract work are $9 per hour. In addition, the list indicates that on average labour represents between 20% and 25% of total contracting costs. The remaining costs would be related to equipment. This results in a total hourly contracting cost of $45 for one worker. We assumed that due to busy season, an additional worker would be required at $9 per hour, resulting in a total cost of $54 per hour. Since the effect of the recommendation would be to allow new costs in excess of hiring one replacement worker, the hourly cost of the recommendation is $45.

Results

We estimate the cost of this recommendation at $1,080,000.

Recommendation – Income Replacement for Students and Youth – Tort Component

Current System

Students or youths who cannot attend school or work are entitled to an income replacement benefit based on the Industrial Average Wage (IAW) at the end of current studies for students or at the age of 16 for youths.

Recommendations for Proposed System

Three recommendations are being made:

1. The Income Replacement Benefit for students and youths should be based on minimum wage… except for those catastrophically injured.
2. For catastrophically injured students or youth, and for those studying at the post-secondary level, pay industrial average wage at the end of studies or age 16.
3. Tort actions should be allowed for actual and potential income loss.

The actuary of SGI costed parts (1) and (2) above. We independently evaluated the impact of part (3), accounting for the recommended changes to tort access to allow recovery of all economic losses.

Methods

For tort claimants, the economic loss below the IAW will be recovered through no-fault Income Replacement Benefits. Therefore, we need only consider the portion of the economic loss above the IAW. We have estimated the severity of the economic loss above the IAW using wage distribution data from SGI's claims database and information from the Appointed Actuary's Report as at December 31, 1999.

We have assumed that only post-secondary students will be successful at pursuing tort actions. This is because post-secondary students demonstrate potential earning capacity above the IAW, and potential earning capacity is to be considered in the tort award. Since post-secondary students are not currently earning full wages, the wage distribution above the IAW in the SGI claims database can be viewed as a measure of earnings potential.

Currently, SGI's database does not distinguish between post-secondary students and other students. We have used age as a proxy for educational status. That is to say, for students currently claiming Income Replacement Benefits, we have considered students aged 19 and over, and half of those students aged 18, to be post-secondary students. Based on this historical information, we have selected an expected number of post-secondary IRB claimants. Using statistics from SGI, we have assumed that 58% of these claimants will be not-at-fault and therefore eligible for the tort award. Multiplying the eligible number of claimants by the expected severity gives the total cost.

Assumptions

As discussed above, we have assumed that only post-secondary students will be successful in pursuing tort actions for potential earning capacity and that this potential is reflected in SGI's claims database.

Also as discussed above, we have assumed that students 19 and over, and half of those at age 18, are post-secondary students.

We have assumed that the proportion of claimants not-at-fault is the same for post-secondary students as for the general population.

Results

We estimate the cost of part (3) of this recommendation at $355,172.

Appendix D

Bibliography

Please note:

The sources referenced in this bibliography include material presented or forwarded to the Personal Injury Protection Plan Review Committee as well as documents gathered in the Committee's own research process. The sources address a wide range of issues and perspectives with varying degrees of relevance to a review of the Personal Injury Protection Plan.

The Review Committee's final analysis and recommendations were not solely based on any of these specific references. Rather, the committee's finding and conclusions are the result of an individual and collective process of critically examining many different considerations.

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Appendix E

Comparative Chart of Benefits

Comparative Chart – Saskatchewan Government Insurance Pre-1995, Personal Injury Protection Plan and Recommended Benefits from Joint No Fault Committee of the Law Society of Saskatchewan and the Canadian Bar Association, Saskatchewan Branch (JNFC)

Benefit/Issue	**Saskatchewan Government Insurance Pre-1995** *No fault provisions of Part II (Injury Accident Benefits)*	**Saskatchewan Government Insurance – Personal Injury Protection Plan**	**Joint No-Fault Committee of the Law Society of Saskatchewan and the Canadian Bar Association, Saskatchewan Branch (JNFC)**
General System	The benefits were available to all Saskatchewan residents who were injured in an auto crash. Not at fault individuals were able to sue at fault parties. Benefits were not indexed	The benefits are available to all Saskatchewan residents injured in an auto crash. Benefits are indexed to Consumer Price Index	**Enhanced Add- On System** which meets the immediate needs of all persons injured in an automobile accident on a no-fault basis, but retains the right of the innocent victim to seek additional compensation from the at fault driver. (Essentially the system which was in place in Saskatchewan prior to January 1, 1995.)
Levy for At Fault Drivers	First Accident $100 Second Accident $250 Third Accident $400 Plus $100 for each additional accident	First accident $100 Second Accident $300 Third Accident $550 with escalating surcharges for additional accidents (Implemented January 1998)	Increase levy for at fault drivers to $375
Third party liability	$200,000 liability coverage paid under plate insurance	$200,000 $10,000 cap for property damage	$200,000 liability coverage
Medical and Rehab Payments	$10,000	$541,824 with personal and homecare expenses to a maximum of $596 per week and child care up to $433 per week	$20,000

Benefit/Issue	Saskatchewan Government Insurance Pre-1995 *No fault provisions of Part II (Injury Accident Benefits)*	Saskatchewan Government Insurance – Personal Injury Protection Plan	Joint No-Fault Committee of the Law Society of Saskatchewan and the Canadian Bar Association, Saskatchewan Branch (JNFC)
Disability Income Benefits	Most people received $150/week; if deemed permanently impaired $200/week Maximum of $150/week for two years for homemakers Maximum of $75/week (for students and children) for 52 weeks if confined to bed, hospital, or wheelchair)	90% of their annual net income on maximum insurable earnings of $56, 855 7-day wait; indexed.	$150/week partial disability $300/week permanent disability Extended weekly benefits: $300/week
Death Benefits	Maximum $10,000 $1,500 per dependent child $2,500 to the parents or estate No education and training to homemaking spouse	$47,427 min with spouse or dependents, otherwise $10,836; educational benefit $32,509 for dependent spouse. Spouse receives IRB until s/he dies, (50% of net income), additional 5% is paid for each dependent child until age 21	• 45% of the deceased's net income for the survivor's life expectancy • 5% of the deceased's net income per dependent to age 21 • minimum benefit of $45,000 to a spouse • $10,000 to an estate if no dependents
Impairment Benefits	$10,000 maximum	Scheduled up to $135,456	$10,000 per claimant plus up to $130,000 catastrophically injured

Benefit/Issue	**Saskatchewan Government Insurance Pre-1995** *No fault provisions of Part II (Injury Accident Benefits)*	**Saskatchewan Government Insurance – Personal Injury Protection Plan**	**Joint No-Fault Committee of the Law Society of Saskatchewan and the Canadian Bar Association, Saskatchewan Branch (JNFC)**
Right to Sue for Non Economic Loss	Yes Victims not responsible for accident can sue for economic and non-economic loss	No	Yes Deductible of $5000 would reduce claims cost by $25M (using a sample of claims for 1992) $10,000 deductible could save $30.5M In their 1997 report, the JNFC notes that legislation would be required to protect the at fault driver from personal responsibility for the deductible amount. Otherwise, the at-fault driver would be exposed to personal liability for this amount. The JNFC suggest this issue cannot be left to be dealt with through extension insurance policies since coverage for the liability deductible would make package policies prohibitively expensive.
Right to Sue for Economic Loss in Excess of No Fault Benefits	Yes	Yes. Injured persons may sue for economic losses that exceed no-fault benefits. Loss of income, only gross income losses that exceed maximum insurable income ($56, 855 per year), award is net of income taxes.	Yes

Benefit/Issue	**Saskatchewan Government Insurance Pre-1995** *No fault provisions of Part II (Injury Accident Benefits)*	**Saskatchewan Government Insurance – Personal Injury Protection Plan**	**Joint No-Fault Committee of the Law Society of Saskatchewan and the Canadian Bar Association, Saskatchewan Branch (JNFC)**
Structured Awards			Pass legislation that would facilitate using structures for the award of damages.
Double compensation			Eliminating Double Compensation (CPP, EI, WCB)
Time Limit for Commencing Action			Extending the Time Limitation for Commencing Action
Cost of Administering Claims			Reformed tort system would reduce administration expenses, estimate $15.4 million savings
Accident Reduction			Reducing the Number of Accidents
Other			Eliminate the $5M paid by AutoFund to Saskatchewan Health
Other			Increasing the Deductible for Vehicle Damage
Other			Modest Premium Increases

Appendix F

Personal Injury Protection Plan Review Committee Schedule of Public Meetings

Personal Injury Protection Plan Review Committee
Schedule of Public Meetings

Location	Date / Times	Venue
Regina	**Mon, June 12, 2000** 9:00 a.m. – 12:00 p.m. 1:00 p.m. – 5 p.m. 7:00 p.m. – 9:30 p.m. **Tues, June 13, 2000** 9:00 a.m. – 12:00 p.m. 1:00 p.m. – 5 p.m. 7:00 p.m. – 9:30 p.m.	Seven Oaks Motor Inn Birch/Willow Room 777 Albert Street
Saskatoon	**Thurs, June 15, 2000** 10:00 a.m. – 12:00 p.m. 1:00 p.m. – 5 p.m. 7:00 p.m. – 9:30 p.m. **Fri, June 16, 2000** 9:00 a.m. – 12:00 p.m. 1:00 p.m. – 5 p.m. 7:00 p.m.- 9:30 p.m.	Centennial Auditorium CIBC Imperial Room 35 – 22nd Street East
Yorkton	**Mon, June 19** 1:00 p.m. – 5:00 p.m. 7:00 p.m.- 9:00 p.m.	Parkland Agriplex Convention Centre 455 Broadway Avenue W.
Prince Albert	**Tues, June 20** 1:00 p.m. – 5:00 p.m. 7:00 p.m.- 9:00 p.m.	John. M. Cuelenaere Public Library Room 3 125 – 12th Street East
Melfort	**Wed, June 21** 1:00 p.m. – 5:00 p.m. 7:00 p.m.- 9:00 p.m.	North East Leisure Centre Multi Purpose Room 202 Burrows Avenue W.
Creighton	**Thurs, June 22** 10:00 a.m. – 2:00 p.m.	R.J's Motel Archie's Banquet Room 225 Creighton Ave.
La Ronge	**Thurs, June 22** 6:00 p.m. – 9:00 p.m.	Harbour Inn 1327 La Ronge Avenue
Buffalo Narrows	**Fri, June 23** 10:00 a.m. – 2:00 p.m.	Friendship Centre 351 Buffalo Street
Estevan	**Mon, June 26** 1:00 p.m. – 5:00 p.m. 7:00 p.m.- 9:00 p.m.	Estevan Exhibition Hall Exhibition Grounds 811 Souris Avenue
Moose Jaw	**Tues, June 27** 1:00 p.m. – 5:00 p.m. 7:00 p.m.- 9:00 p.m.	Heritage Inn 1590 Main Street North
Swift Current	**Wed, June 28** 1:00 p.m. – 5:00 p. m. 7:00 p.m.- 9:00 p.m.	Days Inn A Room Highway #1 East
Kindersley	**Thurs, June 29** 1:00 p.m. – 5:00 p.m. 7:00 p.m.- 9:00 p.m.	Kindersley Inn 601 – 11th Avenue East
North Battleford	**Fri, June 30** 10:00 a.m. – 12:00 p.m. 1:00 p.m.- 5:00 p.m.	Don Ross Centre Room 101 891 – 99th Street

Appendix G

Public Consultation

PUBLIC CONSULTATION

The Review Committee's public consultation process resulted in more than one thousand individuals contacting the Committee over the course of the review period.

Public consultation meetings

At the public consultation meetings held at 13 locations across the province, the Committee received approximately 90 presentations.

Letters

The Committee received more than 240 letters from 190 locations in the province.

E-mail

The Committee received approximately 150 e-mails from people across the province.

Phone calls

The Committee received more than 620 phone calls from Saskatchewan people over the course of the review period.

Appendix H

Letter Sent to Injured Persons who have had Experience with the Personal Injury Protection Plan

The Government of Saskatchewan has created an independent committee to review the Personal Injury Protection Plan (PIPP), which is part of *The Automobile Accident Insurance Act* administered by Saskatchewan Government Insurance (SGI).

As part of the review, the Committee is consulting with the public. We understand that you have had personal experience with the Personal Injury Protection Plan, so we want to ensure you are aware the review is taking place so that you can participate if you are interested.

We would welcome any information or suggestions that you might want to share with us, including the answers to these questions:

- What was your experience with the Personal Injury Protection Plan?
- Do you have any suggestions for the future of the plan?

You may get your comments to us in a number of ways. If you wish to make a written submission, you can send it to the Committee's office by mail at the above address, by faxing it to 306-798-0350, or by e-mail to pipp@sk.sympatico.ca. You may also make a presentation directly to the Committee at one of our public meetings across the province.

If you have internet access, you may wish to view our website www.pippsask.com, which contains information on the review process and the dates and times of public meetings.

You may also reach us by calling our toll free line at 1-877-373-5233. We look forward to hearing from you if you have any questions about the review process or want to share with us your comments and suggestions.

If this letter has reached you in error, we sincerely apologize.

Thank you for your consideration.

Please Note:

The Personal Injury Protection Plan (PIPP) Review Committee does not have access to your name and address. SGI was asked to send this information to you on behalf of the Committee.

Appendix I

Glossary

GLOSSARY OF TERMS

Accident: Any event in which bodily injury is caused by an automobile collision or crash. In order to parallel the language used in **The Automobile Accident Insurance Act**, this report generally uses the word accident. However medical, rehabilitation, insurance and safety industries are increasingly employing the word "crash" or "incident" to reflect that accidents are preventable.

Adjudication: The process of making a decision on a claim for benefits. The term applies to decision-making with respect to both the claimant's eligibility and entitlement.

Alternative dispute resolution: Methods by which conflicts and disputes are resolved other than through litigation in the courts, usually through one of two forms: mediation or arbitration. Alternate dispute resolution typically involves a process much less formal than the traditional court process and includes the appointment of a third party to preside over a hearing between the parties.

Arbitration: The hearing and resolution of a dispute by a referee, usually chosen and agreed upon by all disputants, who may have the power to *impose* a settlement.

Benefits: The amounts paid by an insurance plan to an eligible insured person who is entitled to benefits.

Best practices: Management and operational approaches of organizations that are industry leaders or that have developed discrete areas of proven effectiveness in how they conduct their business.

Bodily injury: Any physical or mental injury, including acquired brain injury, permanent physical or mental impairment, or death.

Change management: The process of dealing effectively with the impact of changes, usually applied in an organizational context to help individuals cope with the implementation of changes.

Collateral benefits: Benefits that an insured person may have access to from outside sources, including employer-funded benefits and additional insurance coverage.

Damages: A sum of money claimed or awarded as compensation for a loss or an injury.

Disability: The result of an impairment that prevents a person from engaging in his or her normal occupation or activities.

Economic loss: Any loss of a financial nature, including income loss, expenses and, in the case of death, financial consequences incurred by dependants. The term has a more narrow, defined meaning for the purposes of Section 103 of the Act.

Impaired: A marked departure from the normal standards of driving expected of a reasonable driver due to the influence of drugs or alcohol.

Impairment: A loss of function that is caused by an injury.

Industrial Average Wage: The industrial aggregate average weekly earnings for all employees in Saskatchewan as published monthly by Statistics Canada.

Injured person: A person who suffers bodily injury caused by an automobile in an accident. The term "victim" is used in **The Automobile Accident Insurance Act**, but this report has generally used the term "injured person".

Liability insurance: The type of insurance that covers an insured for his or her legal liability for damages or injuries to others. Automobile liability insurance covers the owner or driver of a vehicle for liability arising from the use and operation of the vehicle.

Mediation: The process of intervening between parties in a dispute to assist them in coming to an agreement or reconciliation.

No-fault personal injury insurance: A form of insurance in which an injured person receives benefits from the insurer regardless of who was at fault for the accident.

Non-economic loss: Loss of an intangible nature, including pain and suffering, loss of amenities of life, and loss of expectation of life.

Permanent injury or impairment: A permanent anatomical or physiological deficit, a permanent disfigurement, or a permanent acquired brain injury.

Primary caregiver: The primary health care practitioner of an injured person, responsible for coordinating health care directed towards the individual's rehabilitation and recovery.

Subrogation: The right of the insurance company to recover from the party at fault the money it has paid out or will be paying out in benefits to an injured person.

Tort: A wrong or breach of duty (other than the breach of a contract) for which damages can be obtained in a civil action by a person who suffers injuries from that wrong.